

104
SAMOAN WHITE-COLLAR CRIME

Y 4. R 31/3: 104-50

Samoan White-Collar Crime, Serial N...

ING

BEFORE THE

SUBCOMMITTEE ON NATIVE AMERICAN
AND INSULAR AFFAIRS

OF THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

THE DEPARTMENT OF JUSTICE REPORT ON AMER-
ICAN SAMOA WHITE-COLLAR CRIME ASSESSMENT
WHICH HIGHLIGHTS SOME SERIOUS PROBLEMS AND
SUGGESTS POSSIBLE RESOLUTIONS

AUGUST 3, 1995—WASHINGTON, DC

Serial No. 104-50

Printed for the use of the Committee on Resources

SUPERINTENDENT OF DOCUMENTS
DEPOSITORY

APR 19 1996



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1996

20-369cc

BOSTON PUBLIC LIBRARY
GOVERNMENT DOCUMENTS DEPARTMENT

For sale by the U.S. Government Printing Office

Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-052335-4

104
SAMOAN WHITE-COLLAR CRIME

Y 4. R 31/3: 104-50

Samoan White-Collar Crime, Serial N...

ING

BEFORE THE

SUBCOMMITTEE ON NATIVE AMERICAN
AND INSULAR AFFAIRS

OF THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

THE DEPARTMENT OF JUSTICE REPORT ON AMER-
ICAN SAMOA WHITE-COLLAR CRIME ASSESSMENT
WHICH HIGHLIGHTS SOME SERIOUS PROBLEMS AND
SUGGESTS POSSIBLE RESOLUTIONS

AUGUST 3, 1995—WASHINGTON, DC

Serial No. 104-50

Printed for the use of the Committee on Resources

SUPERINTENDENT OF DOCUMENTS
DEPOSITORY

APR 19 1996



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1996

20-369cc

BOSTON PUBLIC LIBRARY
GOVERNMENT DOCUMENTS DEPARTMENT

For sale by the U.S. Government Printing Office

Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-052335-4

COMMITTEE ON RESOURCES

DON YOUNG, Alaska, *Chairman*

W.J. (BILLY) TAUZIN, Louisiana
JAMES V. HANSEN, Utah
JIM SAXTON, New Jersey
ELTON GALLEGLY, California
JOHN L. DUNCAN, JR., Tennessee
JOEL HEFLEY, Colorado
JOHN T. DOOLITTLE, California
WAYNE ALLARD, Colorado
WAYNE T. GILCHREST, Maryland
KEN CALVERT, California
RICHARD W. POMBO, California
PETER G. TORKILDSEN, Massachusetts
J.D. HAYWORTH, Arizona
FRANK A. CREMEANS, Ohio
BARBARA CUBIN, Wyoming
WES COOLEY, Oregon
HELEN CHENOWETH, Idaho
LINDA SMITH, Washington
GEORGE P. RADANOVICH, California
WALTER B. JONES, JR., North Carolina
WILLIAM M. (MAC) THORNBERRY, Texas
RICHARD (DOC) HASTINGS, Washington
JACK METCALF, Washington
JAMES B. LONGLEY, JR., Maine
JOHN B. SHADEGG, Arizona
JOHN E. ENSIGN, Nevada

GEORGE MILLER, California
EDWARD J. MARKEY, Massachusetts
NICK J. RAHALL II, West Virginia
BRUCE F. VENTO, Minnesota
DALE E. KILDEE, Michigan
PAT WILLIAMS, Montana
SAM GEJDENSON, Connecticut
BILL RICHARDSON, New Mexico
PETER A. DEFAZIO, Oregon
ENI F.H. FALEOMAVAEGA, American Samoa
TIM JOHNSON, South Dakota
NEIL ABERCROMBIE, Hawaii
GERRY E. STUDDS, Massachusetts
SOLOMON P. ORTIZ, Texas
OWEN B. PICKETT, Virginia
FRANK PALLONE, JR., New Jersey
CALVIN M. DOOLEY, California
CARLOS A. ROMERO-BARCELÓ, Puerto Rico
MAURICE D. HINCHEY, New York
ROBERT A. UNDERWOOD, Guam
SAM FARR, California
PATRICK J. KENNEDY, Rhode Island

DANIEL VAL KISH, *Chief of Staff*

DAVID DYE, *Chief Counsel*

CHRISTINE KENNEDY, *Chief Clerk/Administrator*

JOHN LAWRENCE, *Democratic Staff Director*

SUBCOMMITTEE ON NATIVE AMERICAN AND INSULAR AFFAIRS

ELTON GALLEGLY, California, *Chairman*

DON YOUNG, Alaska
WAYNE T. GILCHREST, Maryland
WALTER B. JONES, JR., North Carolina
RICHARD (DOC) HASTINGS, Washington
JACK METCALF, Washington
JAMES B. LONGLEY, JR., Maine

ENI F.H. FALEOMAVAEGA, American Samoa
DALE E. KILDEE, Michigan
PAT WILLIAMS, Montana
TIM JOHNSON, South Dakota
CARLOS A. ROMERO-BARCELÓ, American Samoa
ROBERT A. UNDERWOOD, Guam

TIM GLIDDEN, *Staff Director/Counsel*

T.E. MANASE MANSUR, *Professional Staff*

MARIE HOWARD FABRIZIO, *Democratic Professional Staff*

C O N T E N T S

	Page
Hearing held August 3, 1995	1
Statements of Members:	
Faleomavaega, Hon. Eni, a U.S. Delegate from American Samoa	2
Gallegly, Hon. Elton, a U.S. Representative from California, and Chairman, Subcommittee on Native American and Insular Affairs	1
Statements of witnesses:	
Ale, Savali Talavou, Speaker of the House of Representatives, American Samoa	27
Prepared statement	52
Coleman, Peter Tali, former Governor of American Samoa	16
Harwell, R. Wendell, Territorial Auditor	10
Prepared statement	31
Lutali, A.P., Governor of American Samoa	6
Richard, Mark, Deputy Assistant Attorney General, Criminal Division, Department of Justice	21
Prepared statement	35
Stayman, Allen P., Deputy Assistant Secretary for Territorial and International Affairs, Department of the Interior	24
Prepared statement	46
Togafau, Malaetasi M., Attorney General, American Samoa	8
Additional material supplied:	
American Samoa White-Collar Crime Assessment, dated December 1994 . Bill for an Act entitled: "An Act To Create the American Samoa Medical Center Authority as an agency of the Executive Branch of the American Samoa Government, To Repeal Title 13, Chapters 1 and 2 ASCA, To Create a new Title 13, Chapter 01 and To Amend Title 13, Chapter 06, ASCA."	62 102
Responses to Questions:	
Department of Justice, Andrew Fois	89
Office of Governor, A.P. Lutali	92
President of Senate, Letuli Toloa	130
Speaker of House of Representatives, Savali Talavou Ale	132
Territorial Auditor, R. Wendell Harwell	137
Senate Bill No. 22-109, Legislature of American Samoa	95
Title 15, Public Utilities and Energy	112
Communications submitted:	
Gallegly, Hon. Elton: Letter with questions of September 13, 1995, to Hon. Letuli Toloa	128
Lutali, Gov. A.P.:	
Letter of November 20, 1995, to Hon. Bruce Babbitt (Dept. of Interior)	121
Letter of November 20, 1995, to Hon. Janet Reno (Dept. of Justice) ...	119

AMERICAN SAMOA WHITE-COLLAR CRIME

THURSDAY, AUGUST 3, 1995

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON NATIVE AMERICAN AND INSULAR AFFAIRS, COMMITTEE ON RESOURCES

Washington, DC.

The subcommittee met, pursuant to call, at 1:25 p.m., in room 1100, Longworth House Office Building, Hon. Elton Gallegly (Chairman of the Subcommittee) presiding.

STATEMENT OF HON. ELTON GALLEGLY, A U.S. REPRESENTATIVE FROM CALIFORNIA; AND CHAIRMAN, SUBCOMMITTEE ON NATIVE AMERICAN AND INSULAR AFFAIRS

Mr. GALLEGLY. I want to welcome our witnesses today. We know that they have traveled a great distance to share their views on the subject of today's hearing, the American Samoa White-Collar Crime Assessment was issued by the United States Department of Justice. At the conclusion of my statement, I will defer to the delegate to American Samoa to add his welcoming remarks to the current leaders of American Samoa.

I also want to acknowledge and thank former Governor Peter Tali Coleman for volunteering to share his testimony via telephone conference from the Queens Medical Center in Honolulu, Hawaii, where he is recovering from surgery. This, I think, will be the first time a subcommittee or a full committee will receive live testimony telephonically, which is certainly warranted due to the importance of the subject of the hearing, and given Governor Coleman's extensive years as leader in American Samoa.

The Administration is represented today by Mark M. Richard, Deputy Assistant Attorney General, Criminal Division of the Department of Justice, and Deputy Assistant Secretary for Territorial and International Affairs Allen Stayman of the Department of Interior. The Federal Bureau of Investigation and other components of the Department of Justice have devoted significant resources in assessing criminal activity in American Samoa.

The American Samoa White-Collar Crime Assessment, which was only recently released, and is the basis for this hearing, highlights a number of serious problems and suggests possible solutions.

This subcommittee and the full Committee on Resources has already taken steps to address certain problems raised by the Assessment through the enactment of H.R. 1332, which contains the American Samoa Economic Development Act. The legislation approved by the committee provides additional funding to American

Samoa, which is automatically withheld if stringent Federal audit standards are not met. In addition, in order to use the funding for capital improvement projects, American Samoa is required to establish independently audited, semi-autonomous agencies for various areas of public utilities and infrastructure. We have worked closely with the Interior Department's Office of Inspector General to develop the legislative language to apply Federal audit standards and enforcement mechanisms.

In addition to the solutions provided in H.R. 1332, additional legislation will be necessary to provide for the prosecution of Federal crimes in American Samoa. We have an obligation to the people of American Samoa, and to every U.S. taxpayer to ensure that the misuse of Federal funds is both prevented and when necessary, prosecuted. At the same time, I intend to look for the alternatives which will be compatible with our commitment to the people of American Samoa as provided for in the Deeds of Cession.

I am confident that an appropriate legislative solution can be developed with the cooperation and input from the leaders of American Samoa. The Administration, and of course, the delegate, my good friend, Eni Faleomavaega, from American Samoa.

The chair would now recognize my friend, the ranking member, minority member from American Samoa, Mr. Faleomavaega.

STATEMENT OF HON. ENI FALEOMAVAEGA, A U.S. DELEGATE FROM AMERICAN SAMOA

Mr. FALEOMAVAEGA. Mr. Chairman, thank you for holding this hearing on white-collar crime in American Samoa. I know you remain busy, and this week is an especially busy one for all of us.

I want to welcome Governor Lutali; Speaker Savali Ale; President Pro Temp Lutu Tenari Fulmaono; our Attorney General, Malaetasi Togafau; our Territorial Auditor, Mr. Harwell, all from American Samoa at today's hearings. We appreciate, Mr. Chairman, your willingness—I am sorry, Governor, your willingness to travel 8,000 miles to testify before the subcommittee. It is not an easy trip, and your efforts on behalf of the people of American Samoa are sincerely appreciated.

Acting Assistant Secretary Allen Stayman from the Department is also here with us. I certainly want to welcome him here. Finally, it is my understanding that the Department of Justice chose to send Deputy Assistant Attorney General Mark Richard to today's hearing, and I look forward to hearing his testimony.

As we proceed into this hearing, Mr. Chairman, it is important to keep in mind that Governor Lutali recognized in 1993 that white-collar crime may have been a problem in American Samoa. He requested assistance from the Secretary of the Interior and the Department of Justice, and it was at his direction that the assessment team was formed with the cooperative efforts of the Governor and appropriate agencies of the local government.

The report we are considering today is not what the Governor had in mind over two years ago when he wrote to the Secretary of the Interior, but here we are, and we are considering recommendations to the Justice Department assessment team, presumably with departmental recommendations to follow.

Mr. Chairman, I feel it is important to note that many of the findings of the assessment team report are not new. Audit report after audit report has pointed out the shortcomings in the internal controls of the local government's financial operations. As noted in the most recent report, allegations of white-collar crime have been reported by the local and national media.

Issues such as the jurisdiction of Federal courts in Samoa have been debated for over 30 years now. For these 30 years, it has been the understanding of the leaders of the local government that ASG would work with the Department of the Interior in preparing recommendations on how and when it would be best to proceed. Now, all of a sudden, everyone is jumping as if these are new issues discovered by some miraculous investigative process.

I remember years ago, Mr. Chairman, the Department of the Interior was considering a proposed bill introduced by one of our colleagues to authorize an appeals process from Samoa to the Federal District Court in Hawaii, and even to the Ninth Circuit Court of Appeals. I found out that the strongest supporters of this idea were our tuna canneries. I don't blame them because they have hundreds of millions of dollars of investment at stake in Samoa, and they want to make sure the interests of their corporate stockholders are protected. I certainly did not support the proposal for the simple reason that our leaders of the people were not ready to examine such a fundamental change. Except for the well-to-do, how can the average Samoan wage earner, who makes about \$6,500 per year, possibly afford to defend himself in Federal court, let alone bring his grievance to court, when incomes are so low in Samoa.

Another classic example of Federal intrusion without local support was an instance in which an American citizen years ago filed suit in the Federal district court here in Washington, D.C., by suing the person of the Secretary of the Interior, since the Secretary was the authorized overall administrative authority over Samoa. This citizen claimed he was being denied his constitutional right to due process, since Samoa's judicial system did not provide for criminal trials by jury.

This is a classic example, Mr. Chairman, whereby our Samoan leaders testified before the Federal district court, we even had the celebrated Dr. Margaret Mead testifying. All told the judge the Samoan culture ties to families and friendships would make jury trials a very difficult situation. Well, guess what? By a stroke of the pen, Mr. Chairman, the Federal district court ruled Samoa will now have jury trials.

This is not the sole source of the pain I feel, Mr. Chairman. The real source of the hurt is that the Interior and Justice Department attorneys who represented Samoa's interests in court never bothered to appeal the case to the Supreme Court. To this day, Mr. Chairman, Samoa has jury trials, and I suspect Samoa would have had a better chance in court if it had hired a private law firm rather than depended on the Interior Department for assistance.

I cannot help, Mr. Chairman, but note the irony that 20 years later, it is an assessment team of the same Department of Justice that complains how hard it is, even today, to pick an impartial jury in Samoa.

I want to make it clear, Mr. Chairman, that we are aware of the issues raised by the assessment team, and again, it was Governor Lutali who stepped forward and asked for assistance, and I commend the Governor for doing so. He asked for a prosecutor and investigators to prosecute violations of local law, not for a prosecutor and Federal investigators to write a report to be followed by a congressional hearing.

What really bothers me, Mr. Chairman, not only how leaks of this report came about obviously by someone within the agency responsible for its publication, but to suggest and imply that the Samoan culture condones stealing and lying, and that to further suggest that corruption in government is an acceptable activity within the context of the Samoan culture is an insult to every Samoan who is present at this hearing, and I resent that very much.

I also want to note that for years I have been raising the issues addressed in the report publicly and suggesting that a comprehensive Federal study commission, similar to those established for Native Americans and Native Hawaiians be established for Samoa as well. I never advocated a political status commission, but a study commission to thoroughly study the governing documents and what little history is available and report its findings to both the Samoan people and the Congress.

Until the political relationship between Samoa and the United States is clearly defined, Mr. Chairman, a vacuum will exist, and it is more likely than not that it will be the Federal Government that will step in to fill that vacuum. I do believe this will not help plan for Samoa's future.

I submit, Mr. Chairman, that neither the U.S. nor American Samoa needs a relationship based upon misunderstandings and misinterpretations, and I do not want to see a Federal intrusion in the process unless and until the Samoan people and its leadership determine the manner in which they wish to proceed now and in the future. But where does this leave the future of the Samoan people? What are their rights under the current relationship? In my view, Mr. Chairman, there clearly was a misunderstanding in the early part of this century in that there was no meeting of the minds between U.S. negotiators and the Samoan traditional leaders who signed these two basic documents. It remains my opinion that to proceed in an orderly manner, we need a comprehensive and independent study in which both the Federal and local governments participate.

One of the recommendations the Justice Department made is that limited court jurisdiction be extended to Samoa. My fear is that the more the Federal Government gets involved with Samoa, the greater the danger that Samoan culture and traditions will be lost or severely compromised.

I will not now, nor will I ever, support fundamental changes to this basic relationship taken on a piecemeal fashion. While some of the recommendations made by the assessment team may resolve an immediate need, an unintended consequence of these actions may be that in the long run, they destroy the very essence of Samoan culture and Samoa's unique land tenure system.

The Congress is actually addressing another facet of this problem through legislation which will create, for the first time, to my

knowledge, a formal authorization for appropriations for future congressional funding for Samoa. H.R. 1332 and Senate Bill 638 are the vehicles for this discussion. Part of the discussion is the need for the Department of the Interior to maintain an office which directly monitors Federal interests in American Samoa on a daily basis.

As you know, Mr. Chairman, I support legislation that would terminate the Office of Territorial and International Affairs, and give the American Samoan government greater autonomy, while at the same time, make the local government accountable for the use of the Federal funds it receives from the Congress.

Mr. Chairman, after 29 years of uncertainty—it was not until 1929 the Congress officially then ratified the two documents joining the United States and the island groups of Tutuila and Manu'a into some form of a political union. The statute also vested in the President "all civil, judicial, and military powers necessary to govern American Samoa, until such time as Congress provided for a government of the islands."

In 1984, out of concern that the Secretary of the Interior was about to personally intervene for political purposes into the local election process in a partisan manner, Samoa's delegate to the House of Representatives spearheaded a legislative effort to foreclose that option. This 1984 law prohibits any change in the Revised Constitution of American Samoa unless Congress itself makes the change.

But here is the problem, Mr. Chairman. This has only added more fuel to the fire in that if Congress were ever to examine the provisions of the territorial constitution approved by the Secretary of the Interior as it now is, Congress, in my opinion, would have simply to declare Samoa's constitution not in conformance with the Federal constitution, like all other territories' or states' constitutions.

Mr. Chairman, these two Federal statutes are in conflict with one another, and one unintended consequence of the 1984 law is that the Secretary of the Interior now relies on the 1929 law when he wanted to take certain actions, and then relies on the 1984 law when he wishes to avoid responsibility to the Congress as well as to the Samoan government.

I say this somewhat irreverently. The truth of the matter, Mr. Chairman, is that the 1984 law ties the Secretary's hands to a certain extent, although it is my opinion that his hands are not as tied as his solicitor's office claims.

Lest my comments in opposition to Federal intrusion in Samoa's local affairs be misinterpreted, Mr. Chairman, let me state specifically that I am not supporting the status quo. The commission of white-collar crime in American Samoa is no more acceptable in Samoa than it is anywhere else in the United States. If some residents of Samoa are misusing Federal funds, they should be convicted and punished. If some of the residents in Samoa are not paying back loans made to them by Federal agencies, they should be compelled to do so. I am in agreement with the assessment team that these issues need attention, but I express my concern over the team's recommendations on how best to address these issues.

Mr. Chairman, I am not going to read the remaining part of my statement, but want to thank you for this opportunity to express my views on the matter, and I look forward and welcome the statements from our Governor, our Attorney General, and our Territorial Auditor. Thank you.

Mr. GALLEGLY. At this time, we will introduce our first panel of witnesses, the Honorable A. P. Lutali, Governor of American Samoa; Mr. Malaetasi Togafau, the Attorney General for American Samoa; and Mr. Wendell Harwell, the Territorial Auditor for American Samoa.

Let me remind the witnesses that under our committee rules, they must limit their oral statements to five minutes, but their entire statement will appear in the record. We will also allow the entire panel to testify before questioning the witnesses.

The Chairman now recognizes the Honorable A.P. Lutali, Governor of American Samoa. Welcome, Governor.

STATEMENT OF A. P. LUTALI, GOVERNOR OF AMERICAN SAMOA

Mr. LUTALI. Thank you, Mr. Chairman and honorable members of the committee.

On behalf of the leaders and the people of American Samoa, I want to express our appreciation for the opportunity to appear today in this hearing on white-collar crime in American Samoa.

With the subcommittee's permission, I will make a brief statement, and will then yield the floor to our Attorney General and our Territorial Auditor, who have day-to-day responsibility for enforcing accountability and preventing abuse of public funds.

First, I want to emphasize that the White-Collar Crime Assessment by the Department of Justice was performed in response to my request for assistance from Justice and the FBI. I want this subcommittee to know that I welcome advice and support from Federal law enforcement authorities; however, I also recognize that primary responsibility for public integrity and accountability rests with our own local government.

Second, you should know that our Attorney General, Malaetasi M. Togafau, has been actively and successfully prosecuting cases of public corruption over the more than two years which our administration has been in office. We are submitting documentation for the record which makes this clear. The statistics speak for themselves. Our government has, even with limited resources, actively investigated and prosecuted cases involving embezzlement, bad checks, fraud, bribery, corruption, and perjury. Many of the initiatives and reforms recommended by the Department of Justice have already been implemented. Our Attorney General is here today to provide further details and to respond to any questions you may have.

Third, we realize that the first line of defense against public corruption lies in sound financial controls and a strong internal audit function. For this reason, one of my highest priorities when I took office in 1993 was to fill the position of Territorial Auditor with a person of demonstrable experience and objectivity. The auditor and his staff identified deficiencies and areas in which the government could save money. They recommended ways in which we could improve, and we acted on those recommendations. They recommended

that their audit findings be referred for prosecution, and we acted on those recommendations as well.

These and other efforts demonstrate the seriousness of our commitment to improve accountability and discipline within government. I am pleased that Mr. Wendell Harwell, our Territorial Auditor, is here today to describe the work he has done and the work he is doing and to answer your questions.

Fourth, I want to make it absolutely clear that nothing in the traditional Samoan values or culture condones or excuses the misappropriation of government funds or property. Our culture identifies dishonest conduct of this nature as criminal, and any suggestions to the contrary is unfounded and an insult to our people.

In this respect, I would point out that the criminal jury system has functioned fairly and effectively in our territory for nearly 20 years. In the constitutional litigation which brought jury trials to American Samoa, I testified in support of the ability of our people to deliver just verdicts based on evidence presented. Our subsequent experience with the jury system has demonstrated that Samoan custom and family loyalties do not prevent effective law enforcement.

Finally, I would like to emphasize that the question of establishing Federal criminal jurisdiction in American Samoa is very complicated, and goes to the heart of the relationship with the United States. Any extension of Federal judicial authority should be narrowly limited so that it does not provide a vehicle for challenges to our traditional land tenure system. Before creating any new Federal court jurisdiction, the issue should be carefully examined by the relevant congressional committees and field hearings on the subject should be held in American Samoa.

If the establishment of Federal jurisdiction in American Samoa is deemed necessary, I suggest, sir, that the Congress consider augmenting the jurisdiction of our High Court. While our High Court does not have Article III status, the Justices are appointed by the Federal Government. As a former Associate Judge of the High Court, I can assure you that the court has enjoyed a long history of respect and acceptance by our people.

Whatever form of Federal jurisdiction is considered, it should provide for trials in American Samoa, not in Hawaii or on the Mainland. It would be fundamentally unfair to subject our people to the inconvenience and potential prejudice involved in off-island trials. If appeals into the Federal appellate system are allowed, cases from American Samoa should be heard in American Samoa. I note that the Federal Courts of Appeals typically travel within their respective circuits to hear cases, including travel to Puerto Rico.

Furthermore, if a Federal judicial and prosecutorial function is located in Samoa, the judges, magistrates, and prosecutors should be drawn from the ranks of our local legal community and should not be imported from outside. We have passed the point where outside judges and prosecutors are needed to dispense justice on our island. Federal judges and officials in American Samoa should be local people, just as they are in Federal judicial districts in the United States.

I thank you again for the opportunity to testify. At this time, I would like to introduce Mr. Malaetasi M. Togafau, our Attorney General, and Mr. R. Wendell Harwell, our Territorial Auditor.

Thank you very much, sir.

Mr. GALLEGLY. Thank you, Governor Lutali. Mr. Togafau.

**STATEMENT OF MALAETASI M. TOGAFAU, ATTORNEY
GENERAL OF AMERICAN SAMOA**

Mr. TOGAFAU. Mr. Chairman and members of the committee, I appreciate the opportunity to testify before your committee today on the subject of U.S. Department of Justice's recent assessment concerning white-collar crime in American Samoa. My name is Malaetasi M. Togafau, and I am the Attorney General of American Samoa. I was appointed by Governor A. P. Lutali in January of 1993. Prior to being appointed Attorney General, I served as a District Court Judge in American Samoa.

In my testimony, I will provide a brief history of how and why the Department of Justice assessment came about. I will also address some of the progress that American Samoa has made on its own in dealing with white-collar crime and public corruption.

When our administration took office in January of 1993, Governor Lutali was faced with a deficit estimated by the Inspector General of the Department of the Interior to be on the order of \$60,000,000. In the government's bank account was less than half the funds necessary to cover the first payroll. There were allegations that officials in the former administration had been responsible for a number of improprieties which required immediate investigation.

In March of 1993, Governor Lutali wrote to the Secretary of the Interior requesting help in securing immediate law enforcement assistance from the FBI and the prosecutorial assistance of the U.S. Department of Justice. He asked for the designation of three Department of Justice officials, two FBI agents, and one prosecuting attorney to assist in identifying persons responsible for the financial disaster he had inherited and to review the results of the auditors and conduct whatever civil or criminal prosecutions may be warranted.

Eight months later, in December of 1993, a memorandum of understanding was signed by the Interior's Office of Territorial and International Affairs, the U.S. Department of Justice, and the American Samoan government which provided for technical assistance in assessing, number one, the extent and nature of the crime problem, and number two, the need for investigative and prosecutorial assistance to supplement local capabilities.

In February of 1994, an assessment team from Justice arrived in American Samoa and spent three months assessing the problem of white-collar crime. My office provided space, equipment, staff support, and communication support from our local budget.

Early this year, a redacted version of the draft of the executive summary of that assessment was released to members of Congress and to the media. It was serialized, word for word, over a four-day period on the front page of the Samoa News. Thus, it was released and published before either Governor Lutali or I had received official copies or had been given the opportunity to comment.

While the MOU was being negotiated and while the assessment team was collecting data, cases had already been identified and were waiting for investigation. Absent indications that timely assistance would be forthcoming from Justice, I had to proceed with criminal investigation and prosecution of those cases. The local statutes of limitations, the unavailability of witnesses after a lapse of time, and the continuing possibility that evidence would be destroyed left no other option.

Because of limited resources and the lack of territorial laws relevant to some of the crimes, tough choices had to be made as to which cases to investigate and prosecute. I created a team of two investigators and a criminal attorney whose activities were coordinated by a member of my staff with previous investigative experience.

While I cannot speak for law enforcement in American Samoa prior to my service in American Samoa, I am proud of what has been accomplished during my tenure. This committee can be assured that perpetrators of white-collar and public corruption offenses in American Samoa are serving prison sentences, and additional cases are being aggressively investigated and prosecuted.

In March 1995, Governor Lutali, through executive order, dissolved the less-than-effective special task force on narcotics and white-collar crime enforcement. Two days later, the Commissioner of Public Safety, Douglas Jessop, and myself, on behalf of the Office of Attorney General, created through a memorandum of understanding, a joint task force on public corruption. The task force is funded in part through a grant under Purpose Area 6 of the Byrne Memorial Law Enforcement Assistance Formula Grant that is provided by the U.S. Department of Justice through the Bureau of Justice Assistance.

Last month, the joint task force on public corruption provided its regular quarterly report to the Governor. I would be pleased to provide a copy of the memorandum of understanding creating this unit and relay this task force report to the committee.

The report shows the following. The task force has 38 open cases, of which 15 have been referred for prosecution, and 23 remain under investigation.

A total of eight cases have been adjudicated, with six resulting in verdicts of guilty and two resulting in acquittal.

Four criminal cases are pending in the High Court.

Our investigations and prosecutions cover a range of white-collar and public corruption offenses, including embezzlement, bank fraud, bribery, public corruption, forgery, procurement, and tax violations.

We have in just four months recovered more than \$60,000 in public funds through case closures.

Of equal importance, a new atmosphere of official conduct exists in our government. Our public officials and people know that the Governor will not tolerate the abuse of public property and resources, and would-be abusers know that violators will face detection and punishment.

Since June of 1994, my office has taken other steps to target white-collar crime through the coordination of 1,600 hours of on-site law enforcement training for training six investigators, and 80

hours of prosecution training for two criminal attorneys. Many of these training activities are coordinated with our colleagues in the Honolulu resident office of the FBI.

We believe that the American Samoan government has done everything within its current capabilities to target white-collar crime and public corruption in our jurisdiction, and we will continue to do so.

Again, thank you, Mr. Chairman, for the opportunity to testify before this committee. I am ready to provide any further information on the efforts we are undertaking in the criminal justice agencies in American Samoa. Thank you.

Mr. GALLEGLY. Thank you, Mr. Togafau. Mr. Harwell.

STATEMENT OF R. WENDELL HARWELL, TERRITORIAL AUDITOR

Mr. HARWELL. Mr. Chairman, members of the subcommittee, thank you for the opportunity to testify on the Department of Justice Assessment of White-Collar Crime in American Samoa.

My name is R. Wendell Harwell, and I am the Territorial Auditor of the American Samoa government. The territorial audit office is an independent agency. Although Governor A. P. Lutali has requested that I provide testimony today, the views I express here are my own.

I was recruited as a part of a contract of accountability that Governor Lutali brought with him into office in 1993. There were four elements to Governor Lutali's plan.

The first element was to hire a professional Territorial Auditor. I was told by Governor Lutali that it was his desire to clean up the American Samoa government, and he requested my assistance in helping him reach that objective. Since I have assumed the position of Territorial Auditor, we have upgraded the audit staff and developed an audit plan. We are presently recruiting for a second audit manager in order to increase the capabilities of the office.

In the last 16 months, we have issued 20 reports and letters of finding. Thirteen of these reports and letters of finding included recommendations for improving financial controls. All the recommendations we made have been accepted by the ASG, and have either already been implemented or are in the process of implementation.

Five of the reports or letters of finding have detected waste and/or abuse. In six instances, we have issued confidential reports to the Attorney General requesting a criminal investigation of suspected fraud. The Attorney General has already prosecuted two of these cases, and currently has three cases actively under investigation.

We currently have ten audits in progress. Two of these audits include suspected fraud, and eight include suspected fraud, suspected waste and/or abuse.

Although it is difficult to estimate the prospective savings of the recommendations made by the territorial audit office in the last 16 months, it is easily in the hundreds of thousands of dollars annually, and the publicity of the reports coupled with the publicity generated by the prosecution must certainly have a restraining influence on white-collar crime.

The second element of Governor Lutali's plan was to procure, install, and implement a financial management system. The ASG is currently in the process of acquiring such a system. In fact, the request for proposal was issued to interested vendors just last month.

This system, when procured and installed, will provide a vehicle for accurate and timely financial information that will allow better management of scarce government resources. It will also improve internal financial controls as well as provide analytical tools that will assist in the timely detection of fraud.

The third element of Governor Lutali's plan was to acquire the assistance of the Office of Inspector General in determining the financial condition of the American Samoa government. The IG issued a report estimating the general fund, unreserved fund balance, and the cash position at March 31, 1993. Their report contained 15 pages detailing prior audit coverage and providing general comments on the fiscal irresponsibility of prior administrations.

The scant page and a half of recommendations made by the IG were so broad as to be almost useless. For example, a recommendation to "direct the treasurer to develop and implement procedures to maximize cash collections and minimize cash disbursements" is of little use without providing some details of how that might be accomplished.

The fourth element in Governor Lutali's plan was to require investigative and prosecutorial assistance from the United States Department of Justice. This request was made about two years ago.

As the Attorney General has testified, a team was sent to American Samoa to assess the problem of white-collar crime in government. As of last Friday when I left American Samoa, the final report on that assessment had not been received, and to my knowledge, no other assistance has been offered.

It is difficult to comment on only a draft copy of an executive summary without benefit of the report itself; however, the executive summary did state that, "The assessment team found sufficient allegation of criminal activity to predicate the initiation of criminal investigations of individuals in the American Samoa House of Representatives and the following ASG departments," and the report listed 12 departments.

It is my understanding that the Department of Justice has never shared the details underlying these allegations with the American Samoa government. I suggest that reports of such a general nature are virtually useless without supplemental details that the American Samoa government can act upon.

Honorable committee members, the American Samoa government is taking action to prevent, detect, and enforce white-collar crime. The United States government has been very helpful in recently providing funding for a financial management system, and for first-year costs of several professional accounting managers.

I would like to second the Attorney General's hope that our criminal justice agencies will be supported by the Federal Government through further technical assistance and training.

Thank you for the opportunity of allowing me to provide this testimony here today. I will be happy to answer any questions that you may have.

[Statement of R. Wendell Harwell may be found at end of hearing.]

Mr. GALLEGLY. As you all know, this Subcommittee and full Committee on Resources has approved H.R. 1332, which establishes conditions for the future funding for American Samoa. The conditions were developed after extensive discussions with the Department of Interior's Office of Inspector General.

A major concern is the lack of timely and satisfactory audits by American Samoa in meeting the standards of the Single Audit Act.

Perhaps Mr. Harwell could best answer this question for us. Can you give me an idea, what is the most recent year for which an audit has been completed and meets that single act?

Mr. HARWELL. The most recent audit was 1992. There was a disclaimer of opinion issued by the outside auditors, Deloitte & Touche. I believe the last report with a modified opinion or qualified opinion was 1991, sir.

Mr. GALLEGLY. And did it meet the conditions of the Single Audit Act?

Mr. HARWELL. As I remember, it did. Yes, sir.

Mr. GALLEGLY. How do you intend to bring American Samoa's audits up to date and in compliance with the Single Audit Act?

Mr. HARWELL. The most important thing, Mr. Congressman, is to procure and install a new financial management system. Our current automated financial management system, quite frankly, does not work. It does not have audit trails, and it has caused our outside auditors to disclaim an opinion.

I suspect they will continue to disclaim an opinion until we complete the installation of the new system, which is in progress at this moment.

Mr. GALLEGLY. Thank you. To the Attorney General, the assessment recommends local enactment of several things, a general fraud statute, subpoena authority for local law enforcement agencies, and a whistleblower law. What proposals has the administration sent to the legislature to date?

Mr. TOGAFAU. None whatsoever, Mr. Chairman.

Mr. GALLEGLY. None of these?

Mr. TOGAFAU. We are in the process of drafting legislation to that effect. It has not been submitted to the legislature yet, because it is very complicated, and we have to look at different versions in order to meet our needs.

Mr. GALLEGLY. I have several questions that I would like to ask, but we are going—when we start voting somewhere around 2:45 or 3:00, we are going to be over there for quite a while, so in the interests of time and we have a couple other panels, with the agreement of the witnesses, what I would like to do is submit my questions for the official record and send them off to you to have you respond to the committee, if there is no objection.

Mr. FALEOMAVAEGA. I have no objection, Mr. Chairman.

Mr. GALLEGLY. So at this time, I would defer then to Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Mr. Chairman, thank you. I also, because of the situation of the time factor here, I do have a listing of questions as well that I would like to submit for the record and to be submitted to the Governor, to the Attorney General, and to Mr. Harwell

for their official responses, but I just have one or two questions I want to clear up for the record.

The thing that really bothered me, Mr. Chairman, was how this whole report became public, and as I understand from the Attorney General's testimony, neither he nor the Governor were ever consulted on any of the findings of the assessment teams and really raising the issue that there was such massive corruption going on in the government that everybody should be prosecuted; everybody should go to jail; and that really bothered me, and I wanted to ask the Attorney General, how did you hear of the report by this assessment team? Can you clear that for the record, please?

Mr. TOGAFAU. Thank you, Mr. Congressman.

The first time that I was given a copy of the report, when the Assistant Secretary Turner came to American Samoa in April, and with his assistant, Nick Pula. It was Mr. Nick Pula who gave me the copy of that report. That was the first time I received it.

Mr. FALEOMAVAEGA. And that is the official—

Mr. TOGAFAU. It was not through any official transmission.

Mr. FALEOMAVAEGA. But that was the official report?

Mr. TOGAFAU. As far as I am concerned, nothing to say it was the official report. It was just a copy given to me with instruction not to discuss it with anyone else.

Mr. FALEOMAVAEGA. The point I am wanting to make is how is it that the media got hold of the report before you did?

Mr. TOGAFAU. That, I do not know, Mr. Congressman.

Mr. FALEOMAVAEGA. I also have questions for Mr. Harwell. You mentioned that some of the problems that we have had over the years that IG audits and management, what you call study or review, that the Department of Interior has made over the years, they make recommendations that are often so broad and vague, it really did not help, in many instances, the local officials to do their job. I want to ask you if in the findings of the assessment team, were there close consultations with your office at all times when they were in the process of putting this report together?

Mr. HARWELL. No, sir. I can only recall one short discussion with one FBI agent, and it was not very substantive at all.

Mr. FALEOMAVAEGA. And to your knowledge, has the assessment team ever given any copies of a draft version of a report for at least responses of the officials of the local government before making this report as it was publicly distributed?

Mr. HARWELL. I know they didn't give one to me, Mr. Congressman. I got a copy of the executive summary from the executive branch of the government.

Mr. FALEOMAVAEGA. I just want to state for the record, Mr. Chairman, it is not the question of the substance of the report. I think the problem here is that we find the media has been so negative, even some of the members and our own colleagues are saying, "Geez, what in the world is happening down there?" I think the problem that bothers me is the procedure of how this assessment team came about in conducting the study and giving the officials of the local government proper and appropriate time to respond to some of the allegations and some of the findings. I just want to make that known for the record.

On the task force on public corruption as you stated, Mr. Attorney General, who made up this task force? What is the composition of this task force?

Mr. TOGAFAU. There are two investigators from my office, and three police officers from the Department of Public Safety.

Mr. FALEOMAVAEKA. And this task force is still in place?

Mr. TOGAFAU. Yes.

Mr. FALEOMAVAEKA. And there is still presence from the Department of Justice officials helping and collaborating with your office in doing this activity?

Mr. TOGAFAU. No, there is no assistance from the public officials on that, from the U.S. currently.

Mr. FALEOMAVAEKA. So as far as you are concerned, after the issuance of this report, all their activities are finished? In other words, here is the report; now, you go do it yourself. Is that my sense of how this MOU is presented?

Mr. TOGAFAU. Well, I cannot address that issue, sir, because what we are doing right now with the task force itself, it was the effort between the Commissioner of Public Safety and my office through the approval of the Governor in order to address the issue that we feel is sensitive to us in order to combat white-collar crimes in American Samoa.

Mr. FALEOMAVAEKA. My concern, Mr. Attorney General, is that when we established this assessment team with the memorandum of understanding that we are doing this on a friendly basis, we are wanting—we are not trying to point fingers as to who is committing the wrong here, but the idea is that we want to make sure that we have a matter of record, doing it properly, doing it in a way that the law should be—you know, as far as those responsible, but I get the impression that the team just came. Here is the report, dropped it off in your office, and then they left.

I mean, was there—in the MOU, was there any provision that allows any sense of continuity with the Interior Department even since they are the lead agency for American Samoa to bring everybody together and to see that we can work this thing out together?

Mr. TOGAFAU. As far as we are concerned right now, we are awaiting what would be the outcome of this assessment report. We have not sat down with any of the people from the Justice Department or the Interior Department and tried to implement what is in the report right now.

Mr. FALEOMAVAEKA. And your understanding of this MOU, that you worked together with the Interior Department and Justice Department, is that you were supposed to be working together on this?

Mr. TOGAFAU. That is our understanding.

Mr. FALEOMAVAEKA. Now, my impression on how this thing came about is that the Justice Department just did the report, dumped it on your laps, they took off, and you are caught holding the bag.

Mr. TOGAFAU. I guess so.

Mr. FALEOMAVAEKA. I am going to submit the remaining questions I have, Mr. Chairman, for the record in the interests of time.

Thank you, Mr. Chairman.

Mr. GALLEGLY. The gentleman from Michigan, Mr. Kildee.

Mr. KILDEE. Thank you, Mr. Chairman. I apologize again for being late. I had two other subcommittees on resources meeting also. I appreciate the fact that you are having this hearing.

I, too, would like the privilege of submitting some questions in writing to you on this, and I appreciate your presence here today.

Mr. Chairman, I would like to add my affirmative voice to the voice vote by which H.R. 2159 was reported out.

Mr. GALLEGLY. Mr. Underwood.

Mr. UNDERWOOD. No.

Mr. GALLEGLY. No further requests, I want to thank the witnesses. I know that it has been a long journey. I have made that journey before, and I know that it is not the easiest trip in the world. I know it is a very scenic trip from 35,000 or 40,000 feet most of the way, but I do want to thank you for making the long trek, and I know my good friend, Mr. Faleomavaega, can appreciate the endurance it took to get here far better than I.

Mr. FALEOMAVAEGA. Mr. Chairman, I want to thank you personally for your taking time out from your busy schedule and having an opportunity to meet with our Governor and the members of his delegation to express the concerns that he has.

As you know, the budget situation, I sincerely hope that we continue our efforts on a bipartisan basis, and knowing the limited resources that we have to draw from the same well, and my concern as well as you are well aware of, that the Governor and I work very closely together. Hopefully, we will be able to resolve some of the budgetary problems that Samoa now faces, especially for this funding here. I also want to thank you for meeting with our Governor, and thank the Governor very much for his traveling such a long distance to meet with the members of our committee and other members and our colleagues in the House as well as in the Senate. I am very, very appreciative of his coming here to testify before this committee.

Mr. GALLEGLY. Mr. Underwood, did you—

Mr. UNDERWOOD. Yes. Thank you for giving me a second chance, Mr. Chairman.

Basically, I wanted to thank you for your appearance and thank you for the testimony. I am particularly drawn to the comments made by you, Governor, on the issue of the interplay of Samoan culture with the comments made about widespread corruption and illegalities. It has always been a strong area of interest for me, because quite often, people who are not used to a different society frequently identify culture as a culprit or as an excuse for wrongdoing, and basically, based on my own understanding of the culture that I grew up and certainly other cultures in the Pacific Islands, there are no cultures that sanction wrongdoing. There are no cultures that sanction illegal behavior of the kind that we are talking about.

Certainly, to be sure, it must appear very different to Federal officials coming in, people who grew up in the Mainland. Certainly, there must be a lack of familiarity and a lack of understanding and appreciation of the nuances that are second nature to the people who are indigenous to an area, and that may frequently be interpreted as an excuse for corrupt and inappropriate behavior.

We should attempt to look at culture as you do, as something that we celebrate, something that we find comfort in, and something that will help explain things, but it certainly is neither an excuse for wrongdoing nor is it the culprit of wrongdoing, and I can't help but resist the temptation to say that if anybody wants to make a major production out of problems with juries in American Samoa, we ought to turn on the TV and look at the O.J. Simpson jury every day. Thank you.

Mr. KILDEE. Would the gentleman yield?

Mr. UNDERWOOD. Certainly.

Mr. KILDEE. What about the audit that was recently conducted in our own House of Representatives? See how our records have been kept.

Mr. UNDERWOOD. I assume that no one will use culture as a culprit in that instance, although maybe party membership.

Mr. GALLEGLY. I would just like to say to the gentleman that I think his point was well taken, but we have a new vision for auditing, and I hope that maybe we will be able to have a better accounting. You know, the accounting procedures today are much, much better than with the old Monroe calculators, so perhaps, we will have a better system in place, and I thank the gentleman's comments. I thank the witnesses, and we will move on to the next panel.

Actually, the next panel is a panel of one. It is somewhat unprecedented, and I certainly want to make a point that I hope this isn't viewed as precedent-setting, but because of the situation of the Honorable Peter Tali Coleman and his situation in the hospital in Hawaii, he wanted to be here, but unfortunately, he could not be, and through the miracle of the telephone, I am not sure whether it is AT&T or one of the Baby Bells that is helping us today, but I will have to check with John Dingell on that, but in any event, this is, as I have said, unprecedented, and I don't intend that this would be a normal situation in the future, and with the committee's concurrence, we will at this time hear from Governor Coleman via telephone connection.

Mr. FALEOMAVAEGA. Mr. Chairman, I want to say that I certainly have no objection to this new and unique avenue of having hearings before the committee and the Congress, and certainly would welcome former Governor Coleman's statement and the concerns that he has, and all that we are trying to do is to resolve some of the problems that our government is faced with, and I certainly welcome his testimony into the committee.

Mr. GALLEGLY. So with that, are we ready with our—I am not quite sure how we are going to do this, but if you are ready, put the Governor on. Are you there, Governor Coleman? Maybe we should offer an amendment to the telecommunications—

STATEMENT OF PETER TALI COLEMAN, FORMER GOVERNOR OF AMERICAN SAMOA

Mr. COLEMAN. Mr. Chairman, and distinguished members of this subcommittee, I appreciate this opportunity to testify today on the subject of white-collar crime in American Samoa.

With the Chairman's permission, I would like to offer a statement for the record at a later date, and make brief remarks at this

time. Afterwards, I will be happy to answer any questions the committee may have.

I also want to apologize that my continuing recovery from recent surgery prevents me from being there to testify.

I appreciate the Chairman's courtesy, and a special sense of human awareness in arranging for this telephone hook-up as an accommodation to me.

My name is Pete Coleman. I am from a town in American Samoa by the name of Tali. Although I am a former public defender, attorney general, and governor of American Samoa, I want to speak to you today from the broader perspective of one who also has been a Federal career civil servant, who has worked both in Washington at what is now OTIA, and in the field reporting to OTIA; as one who has worked also as a congressional staffer; and as a noncareer political appointee; and as one, who by birth, instinct, and upbringing is Samoan, but through secondary and post-secondary education, legal training, administrative practice and professional experience, has been fully immersed in western law, custom, and convention for almost 60 years.

If I had to describe my life's work, it would be to say my career has been devoted to developing and adapting western-style governmental institutions to nonwestern environments. Where I may have failed or succeeded will be up to history to judge. I can only say that I have tried my best with whatever gifts God has given me to serve as a bridge to understanding between peoples of different cultures.

I am particularly disappointed that I can't be with you in person today, because it would have been a rare chance to appear together in a nonadversarial setting with my longtime political rival but certainly, good personal friend, Governor Lutali, whom I have known since childhood.

Between us, we have headed the government of American Samoa for the entire time since we first began electing our governors in 1977, not yet two decades ago, so our government is still in its teen years.

Although neither of us has firmly closed the door on future government service, I think it is fair to say that most of our political ambitions are behind us. If we recognize that we are nearing the day others will take the helm to guide Samoa's destiny, I think we can make better use of the committee's time by looking forward than by engaging in yet another round of finger pointing, which has been the case so often in the past as one side or another tries to position itself for short-term political gain.

The time has come for us to get beyond talking about how we have cleaned up or intend to clean up this or that mess we inherited from one another's administration. Rather, the time now is to work together, both Federal and local leaders, both Republicans and Democrats, to create a common framework of understanding, which would lead to a common definition of our problems, as well as lasting solutions to safeguard the public interest, both in American Samoa and in the rest of the United States beyond.

Until we have a common framework of understanding, Mr. Chairman, I submit to you that we will continue to talk past each other and never solve our problems, be they white-collar crime or

anything else. The reason we need that framework is because the underpinnings of our two societies are so different fundamentally.

The American legal system which operates in Samoa is based on English jurisprudence as it has evolved over the centuries. It is a system of conflict resolution which produces clearly identifiable winners and losers. Our Samoan culture, on the other hand, is based on thousands of years of the evolution of the Polynesian heritage of conflict resolution by consensus building. Whenever possible, we as Polynesians try to avoid conflict. When we can't avoid conflict, we try to resolve it so that everyone goes away a winner if at all possible.

Even more central to this discussion is our own unique culture, American culture, which although it also comes from Europe has an even more pronounced emphasis on the rights of the individual, which is firmly rooted in the Bill of Rights of our cherished U.S. Constitution. Samoan society, on the other hand, has a different foundation, the Matai system, which emphasizes group responsibility and survivability.

I could go on to develop a whole college course on these two points, conflict resolution and individual rights versus collective responsibility, but I recognize our time is short here. I do believe, however, that these different perspectives, based on different cultural terms of reference, have led to the debate over the role of "Fa'a Samoa" in white-collar crime. I just wanted to point out that I believe that some common understanding of these differences in perspective and cultural reference points is fundamental to understanding each other as you prepare to craft legislation which is remedial, not just punitive.

Beyond the question of political posturing, the other reason I don't want to engage in finger pointing here, just as I would hope that Governor Lutali would refrain from doing, is that I truly believe our problems are systemic. They transcend partisan politics, personalities, and administrations.

Moreover, the problem of white-collar crime is not unique to Samoa nor is it unique to the American territories. Stories of political corruption abound on virtually a daily basis from French Polynesia in the eastern Pacific to Papau New Guinea in the western Pacific.

Why? Because we are all trying to cope with western governmental systems implanted by now departed administering authorities, systems which were built on western experiences and assumptions of human behavior and instincts which do not necessarily translate well or fully into island societies.

As we are trying to cope with these structures with limited human resources, oftentimes under the direction of local officials who don't have the western training or experience, let alone western instincts to manage the sophisticated tasks of modern government. Even where you find well trained top executives, second and third level officials often lack the necessary training to meet western expectations and demands for accountability.

What I guess I am suggesting, Mr. Chairman, is that you have to remember that before you can get across the concept of white-collar crime, you have to explain first just what is white-collar crime. After all, it is only within the span of my whole lifetime that

most Samoan men have come to even wear shirts, let alone white-collars. Our language has no word for collar, white or otherwise.

I say this, of course, not to suggest that Samoan government employees are some sort of savages who do not understand the concept of white-collar crime, but to make a more basic point. It is my metaphorical way of saying that nothing should be taken for granted in trying to devise common points of reference. Nothing is too basic to go unexamined when you are dealing in a bicultural environment.

Some may argue that we can handle the white-collar crime problems ourselves if Samoa is left alone. At the same time, as a former Federal official, I recognize the responsibility to the American taxpayer on whom, unfortunately, American Samoa remains too dependent.

So I believe our local leaders must reach common ground with you, too, but in any effort to please you, I would urge them not to give in to the temptation merely to engage in wholesale prosecution and punishment to beef up statistics just to demonstrate progress whenever they are called upon to testify before Congress.

We have to remember that western style remedies have been tried all over the Pacific in the past and have failed. Why should we think it will be any different in Samoa? We need creative solutions which should include a mixture of education, off-island term junior apprenticeships, senior exchange programs, incentives, local development of ethical standards, performance-based rewards, and yes, where called for, prosecutions and punishment.

To the extent possible, we must take politics out of the essential services of government, as I did over a decade ago when I created ASPA. ASPA works because it operates on sound management principles and was organized that way from its inception. It was built from the ground up, not improvised or built as a patchwork on an existing system. That same principle should be applied to the entire governmental structure.

Similarly, solutions to the white-collar crime problem should be comprehensive, not piecemeal. In Saipan, where I lived for over 12 years, we periodically burned down the tangantangan tree, which was always gratifying for the moment, but we never had time or resources to pull out the roots, so the weeds just grew back, and the trees became taller and stronger in short order. The tangantangan tree was brought in by well-meaning overseas administrators to protect the soil, just like our basic governmental structures were brought decades ago to serve and protect the people. We have to pull both up by the roots and replant new seeds which are appropriate to the environment in which they are planted to do the job for which they are planted, without choking out the natural and human resources they were meant to protect.

However, we must not forget that unlike the tangantangan, when we uproot our governmental structures, we are dealing with human beings, with all their frailties, all their needs and wants, goals and aspirations, and the strengths and weaknesses that go with human nature, no matter what our cultural differences may be.

Finally, Mr. Chairman, as you craft your legislation, hopefully in collaboration with our local leaders, I ask you to remember that

our governmental structure, though based on western models, has adapted itself to local peculiarities and needs. It is sort of like a boat which sinks in a lagoon. Pretty soon, it becomes part of the ecosystem of that lagoon, and the removal of any part of the boat is disruptive to the sea life which has adapted to its presence.

Our local government is not perfect, but it is also very fragile. It is fine to talk about extending the Federal courts or Justice Department jurisdiction to Samoa, for example, but any such move should be examined and undertaken in the context of the entire governmental system it is meant to serve, a system which has developed its own set of checks and balances over the years, however imperfect. Again, I would argue for a holistic approach rather than quick fix, which experience teaches will be doomed to failure.

In summary, Mr. Chairman, I believe any legislative solution to be developed by this committee should be based on achieving a common framework of understanding between dissimilar cultures. It should take into account the entire governmental structure and contain a comprehensive mixture of remedies which will not only correct any past abuses, but also lay the foundation for a future system of incentives and rewards for achievement of mutually shared goals, mutually arrived at.

Thank you again for this great opportunity you have given me and great courtesy from you and your committee to speak here today. I will be pleased to answer questions you may have.

Mr. GALLEGLY. Governor, thank you very much. I am sorry you couldn't physically be with us today, but we all heard your words very clearly, and I am sure that I can speak for my colleagues that aren't here with us today.

I wish you well, and hope that you will be able to join us again one time in the future. At this time, I would like to defer to the minority ranking member, the gentleman from American Samoa, Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Governor Coleman, I know that Governor Lutali joins me and the members of our Samoan community here in the hearing room to express our appreciation and to thank you for your very thoughtful and comprehensive statement, and we appreciate your concerns, and certainly, as a member of this committee, that we will make every consideration of your contribution to the hearing this afternoon. We all want to wish you well from your recent operation, and wish you very much a very speedy recuperation from your surgery.

Mr. COLEMAN. Thank you very much.

Mr. GALLEGLY. The gentleman from Michigan, Mr. Kildee.

Mr. KILDEE. Just to thank the Governor for his testimony and wish him a very rapid and full recovery.

Mr. GALLEGLY. Mr. Underwood.

Mr. UNDERWOOD. Yes, I would like to wish the Governor a full, speedy recovery, and I extend my greetings on behalf of the people of Guam. I would also like to point out that I always thought the tangantangan was a word that originated on Guam, but apparently it is not.

Mr. FALEOMAVAEGA. It is from Samoa.

Mr. GALLEGLY. Thank you again, Governor, and Godspeed.

At this time, we will call our third panel. We have Mr. Mark M. Richard, Deputy Assistant Attorney General, Criminal Division, Department of Justice; Allen P. Stayman, Deputy Assistant Secretary for Territorial and International Affairs, Department of the Interior; and the Chair now recognizes Mr. Richard.

STATEMENT OF MARK RICHARD, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. RICHARD. Thank you, Mr. Chairman and members of the committee. With your permission, I would like to submit for the record the full statement and merely summarize it at this time, if that is acceptable.

Mr. GALLEGLY. Without objection.

Mr. RICHARD. Thank you. I am a Deputy Assistant Attorney General in the Criminal Division with oversight responsibility for the Division's office of international affairs as well as our internal security section, terrorism and violent crimes section, and the office of special investigations.

Today, my testimony will address the white-collar crime problem in American Samoa, which relates in part in our judgment to the absence of effective mechanisms for enforcing Federal statutes. I would also like, with your indulgence, to explore some possible solutions to the problem.

As a result of its status as the only U.S. territory not within the jurisdiction of the United States District Court, there have been no sustained enforcement of Federal criminal laws in American Samoa, with consequences that in our judgment require immediate attention.

In March '93, the Department of Interior received a letter from Governor Lutali in which it was requested that a Justice Department prosecutor and FBI agents be detailed to the American Samoa government to investigate and prosecute public integrity and white-collar crimes. We evaluated that request and determined that before making such a detail, we should in fact do an assessment of both the needs and the effectiveness of such a response to the perceived problems. We then sent, together with the Department of Interior representatives, an assessment team to American Samoa consisting of one senior assistant United States Attorney, and two FBI agents.

In December of 1994, the assessment team submitted a comprehensive report which, after evaluation in the Department of Justice, has been provided both to this committee and to the Governor. It sets out information which establishes to our satisfaction that white-collar crime, and in particular public corruption, appears to be significant and systemic in American Samoa.

Despite the fact that many of these allegations of wrongdoing have in fact been reported over the years to appropriate authorities, very few investigations were in fact initiated by past Samoan administrations, and few of these investigations resulted in ultimate prosecutions.

The assessment team's report suggests that a number of factors have contributed to this situation, including a lack of financial controls that would deter fraud and abuse as well as a lack of training

and experience on the part of investigators and prosecutors regarding white-collar crime. Admittedly, these kinds of offenses are difficult to investigate and require experienced investigators and prosecutors to handle, and they can be under the most trying situation, difficult to handle and require experienced personnel to address them effectively.

Significantly, and coupled with these problems, are inadequacies in our judgment in the legal system. As I mentioned, American Samoa is the only territory over which no Federal district court has jurisdiction. Thus, although the Federal crimes set forth in Part I of Title 18 apply in most instances to American Samoa, there is essentially no effective mechanism for enforcing these laws. There are, in addition, significant gaps in American Samoa criminal law, including the absence of a general fraud statute. Significantly, under Samoan law, law enforcement agencies do not have authority to seek subpoenas prior to the filing of formal charges.

Both the Department of Justice and Interior are committed to developing an appropriate solution to the white-collar crime problem, and other problems relating to the absence of Federal law enforcement authority in American Samoa. In this regard, there appears to us to be a variety of options that can be considered.

One is the extension of limited, and I stress limited, Federal court jurisdiction from the District of Columbia—excuse me, the District of Hawaii—to American Samoa. This option would require legislation to confer jurisdiction over Federal crimes committed on American Samoa under U.S. District Court for the District of Hawaii, and to authorize the United States Attorney for the District of Hawaii to prosecute such crimes. Such a proposal would confer limited criminal jurisdiction on the District of Hawaii and allow the United States to bring suit in the District of Hawaii to enforce civil statutes and to collect the debts owed to the United States by American Samoa.

We are sensitive to the concerns of American Samoans about any proposal that would interfere with the Samoan land tenure and Matai title systems. Accordingly, this option of extending limited Federal jurisdiction would specifically exclude issues concerning Matai title or office or the tenure of communal land. We therefore believe that such a proposal should authorize the creation of separate jury lists for Hawaii and Samoa so that proceedings could be held in American Samoa. It is also anticipated, if this option is adopted, that at the discretion of the court, the District Court in Honolulu would be authorized to hold special sessions in American Samoa. This would, of course, obviate the need to try Samoans in distant locations.

Another option, of course, is vesting Federal jurisdiction in the High Court of American Samoa. The substitution of the High Court of American Samoa for the District Court for the District of Hawaii would run counter to well-established legislative policy that the Federal district courts should have exclusive jurisdiction over the type of proceedings to which the United States is a party.

A second concern with this approach stems from the fact that the Justices of the High Court are appointed by the Secretary of the Interior. This means that the nongovernmental party would be

forced to have its cause decided by a tribunal which is not free from domination by the executive branch.

Lastly, the process of reviewing the decisions of the High Court present difficulties as to its complexity. There is no direct appellant review of the decisions of the High Court of American Samoa by a Federal court. In sum, the decisions of the trial divisions of the High Court would be subject to five levels of review.

Under these circumstances, we would have serious concerns about a proposal to address the white-collar crime problem by conferring Federal jurisdiction on the High Court of Samoa.

We do believe that some solution is essential from both a civil as well as a criminal perspective. There is reason to believe that millions of dollars in debts owed to Federal agencies by residents of American Samoa are at present essentially uncollectible by agencies of the Federal Government.

The Department of Justice has agreed as an interim measure to detail one FBI agent for one year to American Samoa to assist following consultations with appropriate local officials in establishing the local Federal white-collar crime task force, and develop cases that could be prosecuted either in the Samoan courts under present regime, or in any Federal district where, by the nature of the crime, venue might lie without the need for additional legislation. Funding for this interim measure would be provided by DOI, subject to the availability of appropriate issues.

Necessary support personnel will be detailed on an as-needed basis by the FBI, Department of Interior, with funding to be provided by the Department of Interior. In addition, we will request assistance from representatives of the Office of Inspector General and from other agencies, such as the Federal Emergency Management Administration and the Small Business Administration to the extent that they are needed to assist in investigations concerning their respective agencies.

Let me add that our experience has been disappointing in the effectiveness of finding of existing Federal districts in which to bring prosecutions and investigations. The logistics alone, the viability of such inquiries make it obviously a poor substitute for having a direct U.S. district court with jurisdiction to address these problems.

Finally, in light of the findings of the assessment team, we would recommend that a multi-agency Federal audit be conducted to update the 1992 GAO audit.

Mr. Chairman and members of the committee, the Department of Justice is fully committed to working to try to address the white-collar crime problem, to work with this committee in fashioning a response that assures that this problem is addressed in an effective way and consistent with all of the interests involved.

Thank you, Mr. Chairman and members of the committee. I will be glad to answer any questions you may have.

[Statement of Mark Richard may be found at end of hearing.]

Mr. GALLEGLY. Mr. Stayman.

STATEMENT OF ALLEN P. STAYMAN, DEPUTY ASSISTANT SECRETARY FOR TERRITORIAL AND INTERNATIONAL AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. STAYMAN. Mr. Chairman and members of the subcommittee, I am pleased to appear today to discuss the American Samoa White-Collar Crime Assessment.

Governor Lutali wrote Secretary Babbitt on March 16 requesting aid in dealing with white-collar crime. Field work was completed in May of '94, which resulted in a December '94 draft American Samoa White-Collar Crime Assessment. Copies of the draft executive summary were made available to congressional offices and to the American Samoa government in February.

A number of the recommendations found in the recently released final report involved Federal action. Governor Lutali, on panel one, has addressed recommendations for local action.

We plan the following action on items which involve a Federal party. First, the Departments of Interior and Justice are committed to establishing limited Federal court jurisdiction for American Samoa. We expect to transmit draft legislation to the Congress shortly, which will be based on the following concepts. We wish, however, to discuss these concepts with concerned individuals so that any salient points can be accommodated.

First, the Federal District Court for the District of Hawaii would have jurisdiction in civil and criminal causes and proceedings in American Samoa.

Second, while court discretion would control, it is anticipated that Federal judges would be sent to American Samoa to try cases that arise in the territory, and that selection of juries would be from American Samoa.

Three, only the Federal Government or an office or an agency of the Federal Government could bring an action in the Federal court. No non-Federal individual or entity would have standing to sue.

Four, the subject matter jurisdiction of the Federal court would be limited to civil and criminal cases or proceedings to enforce Federal criminal laws or enforce the collection of debts owed to the Federal Government. Land tenure issues and Matai title issues would be expressly excluded from the Federal court's jurisdiction.

We are acutely aware of the fears of many in American Samoa that application of these concepts in the territory would destroy the Matai title system and communal land tenure system. However, I submit that our concepts, if they become Federal law, will rank closely with the Deeds of Cession as the greatest protections of Fa'a Samoa. At present, a Federal judge, steeped in Federal constitutional precedent and tradition, may rule contrary to American Samoan sensibilities on these important issues, because there is no explicit prohibition in Federal law against the direct consideration of land tenure issues and Matai title issues by the Federal court.

A good example of Federal court action was noted by the delegate from American Samoa in his statement about the circumstances under which jury trials were extended to American Samoa. Legislation with an express prohibition would substantially strengthen protection for the land and Matai aspects of Fa'a Samoa. The fact that only Federal officials or agencies would have access to the Federal court is added protection.

Second, an FBI presence is necessary to initiate investigations and a Federal prosecutor is necessary to prosecute offenders. Interior is willing to provide, within budget constraints, interim technical assistance funding, if necessary. The presence of these officials will fulfill Governor Lutali's original request for an increased Federal law enforcement presence. These Federal officials can be granted authority to work closely with local law enforcement authorities under local law. We hope that the Congress will support requested funding for technical assistance in fiscal year '96 so that we can continue to support such important territorial initiatives.

Third, we will encourage the Inspector General to work closely with American Samoa's Territorial Auditor against white-collar crime. Interior provided interim funding again for technical assistance for the position of territorial auditor now occupied by Mr. Wendell Harwell.

Fourth, and finally, with respect to the assessment's recommendations, the Department of the Interior plans to continue as a member of the joint working group which was tasked with developing a plan for resolving American Samoa's financial management problems. Through the working group, Interior has taken the initiative in numerous areas over the past several years to assist the ASG in improving its financial management capability, which in turn, will lessen the opportunity for white-collar crime. Interior has provided \$1,600,000 to ASG for a new financial management and accounting system, and support for the American Samoa public auditor's office.

We have provided assistance for developing a long-term financial recovery plan. We provided ASG with the first installment of a three-year program to hire Mercy, International to co-manage the American Samoa hospital.

I would like to make two additional points in conclusion. First, in 1994, OTIA's financial statements received an unqualified opinion by Interior's Inspector General. This means that OTIA is properly managing the taxpayers' money for which it is responsible.

Other Federal agencies, however, encounter significant problems in American Samoa. These problems are likely associated with programs that provide loans to individuals or businesses.

Second, until 1983, the Secretary of the Interior had broad authority in American Samoa, including the tools to prevent fiscal crisis. In 1983, however, the Congress enacted a prohibition against the Amendment of the Constitution of American Samoa by the Secretary of the Interior without approval of the Congress. Any effective Interior action aimed at controlling ASG deficits would likely run afoul of this provision.

The committee should consider the question of the proper amount and distribution of authority needed to correct these problems. I believe that the Administration's actions in the initiation of the American Samoa White-Collar Crime Assessment and Interior's assistance through the joint working group are a good beginning.

It is time to move on with substantive action: Federal court jurisdiction, placement of audit and investigative personnel, and authority for effective follow-up.

We look forward to working with the subcommittee, the Department of Justice, and ASG so that these goals can be achieved. I

would be pleased to answer any questions that the committee may have. Thank you.

[Statement of Allen P. Stayman may be found at end of hearing.]

Mr. GALLEGLY. Thank you, Mr. Stayman. Mr. Richard, you indicated in your testimony that there are significant gaps in the American Samoa criminal law. How important is the establishment of the territorial general fraud statute and subpoena authority for law enforcement agencies in American Samoa in order to provide an effective mechanism for enforcing the law?

Mr. RICHARD. I would respond this way, Mr. Chairman. What our experience shows us is that you need capabilities at the local level, but you also need a Federal response.

It is imperative that this problem be addressed at both levels, and that is why part of our interim solution is to place someone, an FBI agent, on an interim basis there to work with local authorities, upgrading training, establishing a dialog in how to do these kinds of investigations.

We welcome and look forward to an enhanced relationship with local authorities. We are not suggesting by any means that this is solely a problem that the feds want to come in and respond to.

In answer to your question, directly in terms of legislation, it is a very significant—if there is a political will, if there is the expertise to handle these cases, the absence of viable legal tools, if you will, whether it be subpoenas or appropriate statutes are major factors, so I certainly would encourage that these issues be addressed and addressed rapidly if we are in good faith trying to develop the capability to respond to this problem.

Mr. GALLEGLY. Thank you very much, Mr. Richard.

I have several questions that I would like to ask of both of you, but as we are getting closer to the hour that I am going to end up being over for a long series of votes and the desire to have our fourth panelist up here, in the interest of time, what I would like to do is submit the questions for the record and see that we send them off to you and have a response in a timely fashion, if there is no objection from my colleague to the left here.

Mr. Faleomavaega.

Mr. FALEOMAVAEGA. No objection, Mr. Chairman, and because of the interests of time, I have several questions that I would like to ask both Mr. Richard and Mr. Stayman, but I realize the constraints that you are under, and this being the last day before we go to the August break, it is very bad. It is terrible.

But I would like just to offer a suggestion to Mr. Richard and to Mr. Stayman, the concerns that I have had. I have talked to Al about this very issue, going right to the heart and soul of why we have these problems, the ambiguities and uncertainties, and the fact of these two basic documents that I have been harping on for all these years touches on the very fact of why we end up not knowing exactly how far and to what we should be doing, both Federal activities of the territory, and what the territory itself should do. I make reference to the fact that whether or not these two documents are treaties or deeds, and I will say it again for the record, Mr. Chairman, as far as our friends here, Uncle Sam and the Federal Government's concerned, these documents are deeds, and as deeds, they have no sense or reference of being treaties. As trea-

ties, the sovereignty and the essence of the Samoan people do not have the answers of being treated under the provisions of the Constitution, and if these documents are not treaties, then we are nothing but mere property under the jurisdiction of the Federal Government, and I am very concerned about this, and I have always said that this is one reason why we end up the way we are now, because of these ambiguities.

Now, we have got two contradictions of Federal statutes, the one in 1929 that gives the President by the Congress whole military, judicial, and administrative authority over the territory, and in 1984, we enacted another Federal statute in contradiction to the 1929 statute, so now we have all these attorneys making all their various interpretations as to which statute applies, and it is my opinion when we had the GAO hearing a couple years ago, our friends from Interior said, "Well, I am sorry, Congressman, we don't have the authority because of the 1984 statute," and I said, "Well, what happened to the 1929 statutes?" They said, "We don't know," and in summary, they interpreted it by saying, "Well, by our interpretation, the 1929 statute has been rescinded." I said, "Where does it say?" "Nowhere." So I am very bothered by this, Mr. Chairman, and it is something that we need to pursue, and I know that certainly that maybe my colleagues are wanting to get a better bearing on this in another sitting of the problem.

I want to say the concern that I have had of how this whole thing came about, and I am sure Mr. Stayman and Mr. Richard are very sensitive about this issue, is that when it was first made public, the fact that it came about in a most negative way, giving a very strong implication that the Samoan people are a bunch of liars, embezzlers, and indicating that this was part of our culture, I resent that. I don't know how this thing came about; I don't know how the media made this kind of interpretation, but I certainly don't support it, and I think it is something that we ought to be very, very sensitive about, and I am sure the government joins me in expressing that concern.

So Mr. Chairman, I definitely will submit a list of questions to be made part of the record, and I thank Mr. Stayman and Richard for their testimony. Thank you.

Mr. GALLEGLY. Thank you all very much. At this time, we will move to our fourth panel, and our fourth panel has, I think, one representative and that is the Honorable Speaker of the House, the Honorable Savali Talavou Ale.

Welcome, Mr. Speaker.

STATEMENT OF HONORABLE SAVALI TALAVOU ALE, SPEAKER OF THE HOUSE OF REPRESENTATIVES, AMERICAN SAMOA

Mr. ALE. Thank you. First of all, I would like to acknowledge the presence of one of our legal counselors, Mr. Sulea, who accompanied myself to this hearing.

Mr. Chairman and members of this honorable committee, I am very thankful for the invitation to discuss the FBI report on white-collar crime in American Samoa. No other report has generated as much discussion in the territory as this one. For that reason, I have decided to come to present a statement in the hopes that it will help put the FBI comments in proper perspective.

Mr. Chairman and members of this committee, I am amazed that the number one investigating agency in the Nation, and indeed the world, has put its seal on a report fraught with conclusions based on hearsay. By their own count, the FBI team read and studied about 50 reports in the territory.

This FBI report is an indictment of our Fa'a Samoa. That is the way we live. They blame our culture and political system and fail to present solid evidence. They apparently think we are a small town somewhere in TV-land, which is in the tight grip of a few corrupt politicians.

The FBI wants you to believe our family system is a form of Mafia. Mr. Chairman and members of the committee, I wish they had given us, the real political leaders the chance of interviews. They would have learned things which would have helped them prepare a fair and useful report.

With those few comments, Mr. Chairman and members of this committee, let me now offer my prepared statement for the record. Thank you.

[Statement of Honorable Savali Talavou Ale may be found at end of hearing.]

Mr. GALLEGLY. Thank you very much, Mr. Speaker. Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Mr. Chairman, as I have the chance to peruse the Speaker's statement, I am very, very appreciative of the comments that you made. Interestingly enough, it appears that from the Speaker's testimony that they were never contacted, never really having a chance in this three-month period when the assessment team was doing this project, that it appears that you really were never part of the process, and I think this is something that ought to be taken into consideration.

I would like to ask the Speaker, in your opinion, does the assessment team's report really reflect truly what is the situation that we are faced with in Samoa?

Mr. ALE. Like I said, this report really hurts my conscience, but they are accusing the Samoan way, our Samoan custom, and also reflects how the high rank members of the government runs the government of American Samoa.

Mr. FALEOMAVAEGA. In your opinion—I guess, especially in the capacity of your position as Speaker of the House—do you think that you would at least have had some kind of a private orientation to brief you in terms of some of these findings?

I notice that your criticism of the report is that they make allegations, but they never cite the specifics. Was that one of the concerns that you had on this report?

Mr. ALE. Well, like I said, there was no time of interviews during the team's present in American Samoa. We just heard about the FBI team being in American Samoa, but there was no time to sit down and discuss some of the things.

Mr. FALEOMAVAEGA. In your capacity as Speaker at the time when the report was still being collated or being drafted, were you at any time ever consulted or even asked to comment on some of these findings of the assessment team?

Mr. ALE. We just received the report when we contacted Mr. Manasi.

Mr. FALEOMAVAEGA. So in other words, you received the report in final form but without any communication prior to that time?

Mr. ALE. Yes.

Mr. FALEOMAVAEGA. I also have some questions, Mr. Chairman, that I definitely would like to be made part of the record for the Speaker to respond to, and I thank you very much.

Mr. GALLEGLY. Thank you very much.

Mr. Speaker, I just have one question that I would like to ask now, but I also would like to join my colleague in adding to the record questions that we will submit to you for response.

The assessment indicates the lack of financial controls have contributed to the environment, resulting in fraud and abuse of funds. Does the legislature support providing the necessary resources to enable the government of American Samoa to meet the financial accountability necessary to comply with the audit standards of the Federal Single Audit Act? Are you committed to that?

Mr. ALE. Right now, we are reviewing the revenue business submitted by our government, and in fact, we have approved some of the revenue lists before we recessed.

Mr. GALLEGLY. Thank you, Mr. Speaker. If there are no further questions, this will end the hearing today. Did you have—

Mr. FALEOMAVAEGA. Yes. Mr. Chairman, I, too, would like to express my appreciation for the Speaker for appearing before the committee and to provide the committee with his testimony, and certainly again, I want to express my appreciation to our Governor and our Territorial Auditor and our Attorney General, and our Budget Director that I see here, and our dear friend, Mr. Greg Keener, who works for the Department of Public Safety, and other members of the Governor's staff and cabinet.

Mr. Chairman, my observations in what we have gone through this experience of the hearing this afternoon, as I have said in my initial statement, while it is very easy and convenient to say that we have got the solutions to the problems by addressing it by way of holding or drafting Federal legislation, again, I am very, very cautious even to entertain the idea that we are going to be drafting legislation to correct some of the problems that we are faced with right now in Samoa.

I feel that this is not the course to pursue, and I feel also that I think what the government was wanting, simply just give them the tools to work with and get the job going, but it seems that we have got a full scale, massive legislative action to be taken on the part of the Federal Government, supposedly to cure some of the problems that we are faced with.

I don't feel that this is the trend that we should follow, and I think we should continue to consult closely with the Governor and his administration, the leaders of our legislature, and to see what other possible options or avenues that we could pursue to resolve this serious problem.

Again, Mr. Chairman, I thank you for this initiative and your leadership in calling this hearing. I know that it certainly has quieted some of the concerns of my colleagues on this side of the aisle, because I was very upset, Mr. Chairman, to tell you quite honestly, because the implications of how this whole report came about was in a very negative way, and a way that I just could not

believe that this is the kind of thing that we are pursuing, not only witch hunting, but to suggest that as if some of these problems were not under consideration for all these years now, and I am not putting the blame on any one agency or group of individuals or even organizations. I just feel that we got the problems. I think there are options that we could exercise, and I certainly look forward to working with you and the committee to see what other possible course of action we could pursue in the coming weeks and months.

Again, Mr. Chairman, I thank you for your help in this hearing.

Mr. GALLEGLY. I thank you and I thank all of those that made this long trek. Believe me, none of us take lightly the effort that you have made to be here today, and I am absolutely convinced that this hearing is going to play a very important role in working with and addressing this issue as we move ahead.

I think this is a very important step in the process, and remain committed to see that we work this through and work well with the ranking member, and again, thank you all for being here today, and I look forward to working with you as we work on this issue and other issues affecting American Samoa.

The hearing is adjourned.

[Whereupon, at 3:10 p.m., the subcommittee was adjourned; and the following was submitted for the record:]

STATEMENT OF R. WENDELL HARWELL
Territorial Auditor of American Samoa

Thank you for the opportunity to testify on the Department of Justice Assessment of White Collar Crime in American Samoa. My name is R. Wendell Harwell, and I am the Territorial Auditor of the American Samoa Government. The Territorial Audit Office is an independent agency of the American Samoa Government. Although Governor A. P. Lutali has requested that I provide testimony today, the views that I express here are my own.

I was recruited as a part of a contract of accountability that Governor Lutali brought with him into office in 1993. Governor Lutali was committed to the appointment of a professional Territorial Auditor, and he requested investigative and prosecutorial support from the U.S. Department of Justice to follow-up on audit findings of misconduct.

TERRITORIAL AUDIT OFFICE

I was told by Governor Lutali that it was his desire to "clean up the American Samoa Government," and he requested my assistance in helping him reach that objective. I brought with me to American Samoa almost 35 years of auditing experience -- primarily as an audit partner of an international CPA firm. I am a Certified Public Accountant licensed to practice in California, Texas, and now American Samoa, and I am also a Certified Fraud Examiner.

Since I have assumed the position of Territorial Auditor, we have upgraded the audit staff and developed an audit plan. We are presently recruiting for a second audit manager in order to increase the capabilities of the office. In the last 16 months, we have issued twenty reports and letters of finding. Thirteen of these reports and letters of finding included recommendations for improving financial controls. All the recommendations we made have been accepted by the American Samoa Government and have either already been implemented or are in the process of implementation.

Five of the reports or letters of finding have detected waste and abuse. Seven of the reports or letters of finding have detected possible fraud. In six instances, we have issued confidential reports to the Attorney General requesting

criminal investigation. The Attorney General has already prosecuted two of these cases and currently has three cases actively under investigation. The Territorial Audit Office currently has 10 additional audits in progress. Two of these audits include suspected fraud and eight include suspected waste and abuse.

Prior to Governor Lutali's administration, the American Samoa Government did not employ a professional Territorial Auditor, but instead employed an Acting Territorial Auditor who was not a CPA or CIA and who was never confirmed by the American Samoa Legislature, as required by local law. This Acting Territorial Auditor issued only three audit reports or letters of finding in the 16 months preceding the Lutali administration, and none of these audits addressed substantive issues.

Although it is difficult to estimate the prospective savings of the recommendations made by the Territorial Audit Office in the last 16 months, it is easily in the hundreds of thousands of dollars annually. Moreover, the publicity of the reports coupled with the publicity generated by the prosecutions must certainly have a restraining influence on white collar crime. All of this has been possible because our office has the support of key officials in the American Samoa Government, including the Governor, the Treasurer, and the Attorney General.

The Governor has issued Executive Orders and General Memoranda in support of our recommendations, the Treasurer has made records easily accessible, and the Attorney General has supported our requests for criminal investigation, and has also called on the Territorial Audit Office for expert testimony when required. The Office of the Attorney General and the Territorial Audit Office have worked together in several cases of suspected or actual fraud.

FINANCIAL MANAGEMENT SYSTEM

The present administration inherited a computer system that was so unreliable that Deloitte & Touche, the American Samoa Government's external certified public accountants, disclaimed an opinion on their audit report on the

financial statements of the American Samoa Government. The Government is currently in the process of acquiring a new financial management system.

This new system, when procured and installed, will provide a vehicle for accurate and timely financial information that will allow better management of scarce government resources. It will also improve internal financial controls as well as provide analytical tools that will assist in the timely detection of fraud. We believe the incidence of white collar crime decreases significantly when strong financial controls are coupled with a proactive criminal enforcement system.

The present Administration also inherited financial records in complete disarray: books that did not balance, bank statements that had not been reconciled for months, and filing systems that were incomplete. The Government is currently in the process of recruiting four professional accounting managers for the Department of Treasury. These professional managers will provide proactive leadership in bringing the American Samoa Government's financial records up to date, in monitoring and improving existing internal financial controls, and in recommending additional internal financial controls.

This financial information system along with the additional professional management will greatly enhance the ability of the American Samoa Government to detect and to prosecute white collar crime in government. Successful prosecution of white collar crime requires, in addition to ordinary investigative techniques, the technology that will provide accurate, detailed financial information that can be relied upon by both the prosecutors and the court.

JUSTICE DEPARTMENT ASSESSMENT

Regarding the assessment by the Justice Department, I would like to address the statement in the Executive Summary that "a striking example of the lack of accountability is the recent refusal by the Fono to allow an audit of its financial records by ASG's Territorial Audit Office after allegations were made that Fono members had abused their travel vouchers and intentionally overspent the budget." You should not conclude from this statement that the Territorial Audit Office does not have the will to audit the Fono. The fact is that the Territorial Audit Office does not have the legal authority to audit either the legislative or judicial branches of government. However, the legislative and

judicial branches are subject to audit by the Office of the Inspector General of the Department of the Interior, and the Inspector General has recently completed an audit of the Fono.

CONCLUSION

Finally, I want to emphasize that the American Samoa Government is taking action to prevent, detect, and prosecute white collar crime. The Interior Department has been very helpful in recently providing funding for a financial management system and for the first-year costs of several professional accounting managers. This funding will allow the American Samoa Government to improve its recordkeeping system, and to develop accurate accounting and management information. As a result, we expect to see a vast improvement in financial and management controls.



Department of Justice

STATEMENT OF

MARK M RICHARD

DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE THE

SUBCOMMITTEE ON NATIVE AMERICAN & INSULAR AFFAIRS
SUBCOMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

CONCERNING

WHITE-COLLAR CRIME IN AMERICAN SAMOA

PRESENTED ON

AUGUST 3, 1995

Mr. Chairman and members of the Committee, thank you for inviting me here today.

I am a Deputy Assistant Attorney General in the Criminal Division with oversight responsibility for the Division's Office of International Affairs, as well as the Internal Security Section, Terrorism and Violent Crimes Section, and Office of Special Investigations.

Today, my testimony will address the white-collar crime problem in American Samoa, which relates in part to the absence of any mechanism for enforcing federal statutes. I also would like to explore possible solutions to the problem.

As a result of its status as the only U.S. Territory not within the jurisdiction of a U.S. District Court, there has been no sustained enforcement of federal criminal laws in American Samoa -- with consequences that require immediate attention. One of the most serious consequences is the evolution of a significant white-collar crime problem in American Samoa, including widespread misuse of federal and other public funds.

Over the past years, the financial practices of the American Samoan Government have been the subject of repeated audits and investigation by the Department of the Interior and the Congress.

Those audits have revealed highly inadequate controls and oversight regarding the use of governmental funds. They also have found indications that competitive bidding practices have been ignored and circumvented and that officials may have been involved in conflicts of interest and other abuses.

In a March 1993 letter to Department of the Interior's Secretary Bruce Babbitt, newly-elected Governor Richard Lutali of American Samoa pledged to restore integrity, credibility and sound fiscal management to the territorial government. To that end, Governor Lutali requested that, pursuant to 48 U.S.C. § 1666, a Justice Department prosecutor and FBI agents be detailed to the American Samoa Government to investigate and prosecute public integrity and white-collar crimes.

In response to that request, the Departments of Justice and Interior sent an assessment team to American Samoa consisting of one Assistant U.S. Attorney and two FBI agents. In December 1994, the assessment team submitted a comprehensive report, which has been provided to the Governor and this Committee. It sets out evidence that white-collar crime -- and in particular, public corruption -- appears to be widespread in American Samoa. The report also details some of the factors that pose obstacles to the prosecution of such crime.

The team further found that many of the allegations centered on conflicts of interest in the awarding of government contracts to individuals who were related, either directly or through extended families, to the officials approving the contracts.

Other allegations focused on the abuse of government funds for personal benefit. Despite the fact that many of these allegations had been reported to the appropriate authorities, and were well-known to the public, very few investigations were initiated by past Samoan Administrations, and few of those investigations resulted in prosecutions.

The assessment team's report suggests that a number of factors have contributed to this situation. They include a lack of financial controls that would deter fraud and abuse, as well as a lack of training and experience on the part of investigators and prosecutors regarding white-collar crimes.

Coupled with these problems are inadequacies of the legal system. As I have mentioned, America Samoa is the only territory over which no federal district court has jurisdiction. Thus, although the federal crimes set forth in Part I of Title 18 apply in most instances to American Samoa, there is no effective mechanism for enforcing those laws.

There are, in addition, significant gaps in American Samoan criminal law, including the absence of a general fraud statute. Moreover, under Samoan law, law enforcement agencies do not have authority to seek subpoenas prior to the filing of formal charges.

The Departments of Justice and the Interior are committed to the development of an appropriate solution to the white-collar crime problem and other problems related to the absence of federal law enforcement authority in American Samoa. There are several options under consideration: One is the extension of limited federal court jurisdiction from the District of Hawaii to American Samoa. This option would require legislation to confer jurisdiction over federal crimes committed on American Samoa on the U.S. District Court for the District of Hawaii, and to authorize the U.S. Attorney for the District of Hawaii to prosecute such crimes. Such a proposal would confer limited criminal jurisdiction on the District of Hawaii and allow the U.S. to bring suit in the District Court of Hawaii to enforce civil statutes and to collect the debts owed to the United States by American Samoans.

We are sensitive to the concerns of American Samoans about any proposal that would interfere with the Samoan land tenure and Matai title systems. Accordingly, the option of extending limited federal court jurisdiction would specifically

exclude issues concerning Matai title or office, or the tenure of communal land. We therefore believe that such a proposal should authorize the creation of separate jury lists for Hawaii and Samoa so that proceedings could be held in American Samoa. It is anticipated that, at the discretion of the court, pursuant to 28 U.S.C. § 141, the District Court in Honolulu would be authorized to hold special sessions in American Samoa. In many cases, this should obviate the need to try Samoans in such a distant location.

The creation of a separate District for American Samoa would of course require an expenditure of federal funds that seems difficult at this time, in light of the small number of cases that would be involved.

Another option is vesting federal jurisdiction in the High Court of American Samoa. While we fully recognize that the High Court is a competent tribunal, we have certain concerns about whether it is suited to proceedings to which the Federal Government is a party.

The substitution of the High Court of American Samoa for the District Court for the District of Hawaii would run counter to well established legislative policy that the federal district courts should have exclusive jurisdiction over the type of proceedings to which the United States is a party. For example,

18 USC § 3221 provides that the District Courts of the United States have exclusive jurisdiction of all offenses against the criminal laws of the United States. With regard to the collection of debts owed to the United States, 28 U.S.C. §§ 3001 and 3002(2) provide for an exclusive collection procedure in the courts created by Congress. Similarly, regulatory statutes provide for enforcement and judicial review in the federal courts.

A second concern stems from the fact that the Justices of the High Court are appointed by the Secretary of the Interior. This means that the non-governmental party would be forced to have its cause decided by a tribunal which is not free from domination by the executive branch.¹ Hence, this judicial setup

¹ The High Court is composed of the Chief Justice, an Associate Justice, Acting Associate Justices and Associate Judges. The Justices are appointed by the Secretary of Interior, and may be removed by him for cause. American Samoa Code §§ 3.1001, 3.0220. The Judges are appointed by the Governor of American Samoa, upon recommendation of the Chief Justice and confirmation of the Senate of American Samoa. ASC § 3.1004.

The sessions of the Trial Division of the High Court consist of a Justice and the two Associate Judges. Hence, they are presided over by an appointee of the Secretary of the Interior. The sessions of the Appellate Division are held before three Justices and two Associate Judges. ASC § 3.0220. Since there are only two permanently appointed Justices, and since the Justice who presided in the Trial Division does not sit on appeal from the decisions in which he participated, the Secretary of the Interior has to appoint two Acting Associate Justices to provide for a full appellate bench. Ibid. The Secretary of the Interior usually designates federal judges to be acting Associate Justices. It should also be mentioned two Justices and one Associate Judge constitute a quorum of the Appellate Division (*ibid*), and in the case of a difference of opinion among the Justices and Associate Judges the opinion of two of the Justices prevails. ASC §§ 3.0221.

would invite challenges that the procedure violates the due process of law. The question of appearances might be of greater concern in the Appellate Division, where the Secretary of the Interior appoints two Acting Associate Justices ad hoc. While the Acting Justices are federal judges, the non-government party could well assert that the Secretary selected them because he was aware of their legal views. Finally, the decisions of the High Court are subject to review by the Secretary of the Interior, which would intensify the due process problem. We cannot underestimate the vulnerability of this scheme to attack.

Lastly, the process of reviewing the decisions of the High Court present difficulties as to its complexity. There is no direct appellate review of the decisions of the High Court of American Samoa by a federal court. The Secretary of the Interior's rulings are subject to review in the U.S. District Court for the District of Columbia. The ruling of that District Court is appealable to the U.S. Court of Appeals for the District of Columbia, which would be subject to discretionary review in the Supreme Court by writ of certiorari.

In sum: the decisions of the Trial Division of the High Court would be subject to five levels of review. First, in the Appellate Division of the High Court; second, before the Secretary of the Interior; third, in the District Court for the District of Columbia; fourth, in the Court of Appeals for the

District of Columbia Circuit; and fifth, in the Supreme Court. Decisions of the District Court for the District of Hawaii, by contrast, would be subject only to two levels of review.

It might be suggested that the review of the decisions of the High Court would be simplified if the judgments of the Appellate Division of the High Court were made appealable to the Court of Appeals for the Ninth Circuit. This, however, would create the awkward situation that some decisions of the High Court are reviewable in the Ninth Circuit and others are not. Proposals to provide for the appellate review of all High Court decisions in the Ninth Circuit have been stalled because of opposition from American Samoa.

Under these circumstances, we would have serious concerns about a proposal to address the white-collar crime problem by conferring federal jurisdiction on the High Court of American Samoa.

We believe that some solution is essential from both a civil as well as a criminal perspective -- there is reason to believe that millions of dollars in debts owed to federal agencies by residents of America Samoa are at present essentially uncollectible by agencies of the Federal government.

This Department has agreed, as an interim measure, to detail one FBI agent for one year to American Samoa to: (i) assist, following consultations with appropriate local officials, in establishing a local-federal white-collar crime task force; and (ii) develop cases that could be prosecuted either in the Samoan courts or in any federal district court where, by the nature of the crime (e.g., conspiracy to defraud the United States) venue might lie without the need for legislation. Funding for the interim measures will be provided by DOI, subject to the availability of appropriations. In this regard, it should be noted that without this funding source, it is unlikely that the FBI could fund this activity through existing appropriations.

Necessary support personnel will be detailed on an as-needed basis by the FBI, DOI, and/or this Department, with funding to be provided by DOI, if available. In addition, we will request assistance from representatives of the Office of the Inspector General from other federal agencies, such as Federal Emergency Management Administration and Small Business Administration to the extent that they are needed to assist in investigations concerning their respective agencies.

Finally, in light of the findings of the assessment team, we recommend that a multi-agency federal audit be conducted to update the 1992 GAO audit.

Mr. Chairman, and members of the Committee, the Department of Justice is fully committed to combatting this white-collar crime problem, and in that regard, we plan to do everything we can to ensure that justice is done on American Samoa.

I would welcome any questions that you might have at this time.

STATEMENT OF ALLEN P. STAYMAN
DEPUTY ASSISTANT SECRETARY OF THE INTERIOR
FOR
TERRITORIAL AND INTERNATIONAL AFFAIRS
BEFORE THE HOUSE SUBCOMMITTEE ON NATIVE AMERICAN AND INSULAR
AFFAIRS
REGARDING THE AMERICAN SAMOA WHITE-COLLAR CRIME ASSESSMENT
AND SOLUTIONS

August 3, 1995

Mr. Chairman and members of the Subcommittee on Native American and Insular Affairs, I am pleased to appear today to discuss the American Samoa White-Collar Crime Assessment and appropriate measures for dealing with this serious issue.

American Samoa Governor A. P. Lutali wrote Secretary Bruce Babbitt, March 16, 1993, requesting aid in dealing with white-collar crime. The Office of Territorial and International Affairs (OTIA), responded with funding for the formation of a partnership among the American Samoa Government (ASG), the Department of Justice, and Department of the Interior. The partnership called for Department of Justice personnel to assess white-collar crime in the territory. The field work was completed in May 1994, which resulted in the December 1994 American Samoa White-Collar Crime Assessment. We support the Assessment's recommendations for an increased federal law enforcement presence in American Samoa. Having delineated the issues and having proposed actions to attack white-collar crime, it remains for Interior, Justice, and the ASG, with the aid of the Congress to follow through.

RECOMMENDATIONS

A number of the recommendations found in the Assessment involve federal action:

- (1) limited federal district court jurisdiction to enforce federal statutes in American Samoa and collect debts owed the federal government,
- (2) an FBI resident agency in American Samoa,
- (3) a joint local-federal white-collar crime task force,
- (4) a local-federal law enforcement advisory board,
- (5) auditing by Interior (Inspector General), the General Accounting Office, and independent firms until the American Samoa's Territorial Audit Office functions optimally, and
- (6) continuation of the joint ASG-DOI working group to implement the GAO admonition that ASG financial and management problems be fixed.

The Assessment contains a number of additional recommendations, which are strictly local in nature, that would aid law enforcement in American Samoa. I understand that Governor Lutali is addressing the recommendations for local action.

FOLLOW THROUGH

From the federal perspective, the Departments of the Interior and Justice view the American Samoa White-Collar Crime Assessment as providing the foundation for further action. We plan to follow through.

We plan the following action on each of the items I noted earlier where a federal party may be involved.

Federal Court Jurisdiction. The Departments of the Interior and Justice are committed to establishing limited federal court jurisdiction for American Samoa in all causes and proceedings that could be brought in American Samoa by the federal government (1) to enforce federal law or collect debts owed the federal government, or (2) pursuant to international agreements. Federal court subject matter jurisdiction would be limited because (while references may be made to land tenure issues or Matai title issues in federal court proceeding) land tenure issues and Matai title issues could not be directly decided by the federal court.

Concepts I will discuss here are incorporated in draft legislation now under review within the Administration. We expect to transmit draft legislation to the Congress shortly, when the review is completed. The Departments of the Interior and Justice believe that the concepts I am about to outline accommodate both the needs of the federal government to protect federal law and property, and the needs of the federal government and American Samoa to protect the Fa'a Samoa. We wish, however, to discuss these concepts with concerned individuals, especially representatives from American Samoa. We want to include any salient points that can be accommodated.

The concepts under consideration are:

- o The Federal District Court for the District of Hawaii would have jurisdiction in civil and criminal causes and proceedings in American Samoa.
- o While court discretion would control, it is anticipated that Federal judges would be sent to American Samoa to try cases that arise in the territory, and the selection of juries would be from American Samoa jury pools.
- o Only the federal government or an officer or agency of the federal government could bring an action in the federal court -- no non-federal individual or entity would have standing to sue.
- o The subject matter jurisdiction of the federal court would be limited to civil and criminal causes or proceedings to enforce federal criminal laws or enforce the collection of debts owed the federal government -- land tenure issues and Matai title issues would be expressly excluded from the federal court's jurisdiction.

We in the Executive branch are acutely aware of the fears of many in American Samoa that federal court jurisdiction would bring common law property concepts into effect in American Samoa. The concern is that application of these concepts in the territory could destroy two pillars of Samoan culture -- the Matai or chiefly title system and the communal land tenure system. Additionally, we

are aware of federal obligations in the Deeds of Cession to "respect and protect the individual rights of all people . . . to their lands and other property" and "that the rights of the chiefs in each village and of all people concerning their property according to their custom shall be recognized."

I submit that our concepts, if they become public law, will rank closely with the Deeds of Cession as the greatest protections of the Fa'a Samoa. At present, should land or Matai issues arise in a federal court proceeding, a federal judge, steeped in federal constitutional precedent and tradition, may rule contrary to American Samoa sensibilities on these important issues. There is no explicit prohibition in federal law against the direct consideration of land tenure issues and Matai title issues by a federal court. Legislation with such an express prohibition would strengthen immeasurably protection for the land and Matai aspects of Fa'a Samoa. The fact that only federal officials or agencies would have access to the federal court is added protection.

We believe that careful drafting and scrupulous attention to the letter and spirit of the Deeds of Cession will allow us, working together, to address both federal and local concerns for the Fa'a Samoa and for enforcement of federal statutes and accountability for federal funds.

FBI Presence. An FBI presence is necessary to initiate investigations, and a federal prosecutor is necessary to prosecute offenders. As soon as the Department of Justice believes it practicable, Interior is willing to provide (within budget constraints) interim technical assistance funding, if necessary, for the stationing of an FBI agent(s) and a prosecutor in American Samoa. The presence of these officials will fulfill Governor Lutali's original request for an increased federal law enforcement presence. These federal officials can be granted authority to work closely with local law enforcement authorities under local law. This is a good example of the need for and validity of Interior's technical assistance program for the territories. Law enforcement in American Samoa has quickly come to everyone's attention. Because of the budget cycle, it normally would take two years to address this time-sensitive crime issue. Because the need here is immediate, however, we are ready, willing, and able to act now on interim funding for Justice personnel with resources from our technical assistance program. We hope that the Congress will support requested funding for technical assistance in fiscal year 1996 so that we can continue to support such important territorial initiatives as needs arise.

White-Collar Crime Task Force and Law Enforcement Advisory Board. The Department of the Interior sees value in the recommended objectives for the task force and advisory board. Should the ASG wish, we will be glad to participate.

Interim Auditing. In 1982, Interior's Inspector General was given the authority of the former government comptroller to "audit all accounts pertaining to revenue and receipts of the government of American Samoa. . . ." (48 U.S.C. 1668(b)) This authority "shall extend to all activities of the government of American Samoa, and shall be in addition to the authority conferred upon the Inspector General by the Inspector General Act. . . ." (48 U.S.C. 1668(c)) We will encourage the Inspector General to work closely with American Samoa's Territorial Auditor against white collar crime. Interior provided interim funding for the position of Territorial Auditor, now occupied by Mr. Wendell Harwell. Mr. Harwell is to be complimented for his effective efforts in his short time on the job. Additionally, the Attorney General, Mr. Malatasi Togafau, must be commended for his aggressive prosecution of crimes and his cooperation in providing information for the White-Collar Crime Assessment.

Continuation of Joint ASG-DOI Working Group. The Department of the Interior plans to continue as a member of the Joint Working Group (established in 1992 as directed by the congressional appropriations committees in report language), which was tasked with developing a plan for resolving American Samoa's financial management problems. The authors of the Assessment were quite blunt in quoting the 1992 General Accounting Office audit: "What needs to happen now is that both the American Samoa government and Interior get serious about fixing the problems." The lack of adequate financial management controls in American Samoa create a climate conducive to white-collar crime. Through the Joint ASG-DOI Working Group, Interior has taken the initiative in numerous areas over the past several years to assist the ASG in improving its financial management capability, which in turn will lessen the opportunity for white-collar crime. We joined with the ASG to form the joint working group recommended by the appropriations committees. We provided \$1.6 million to the ASG for a new financial management and accounting system under our management controls program, and support of American Samoa's Public Auditor. We provided assistance for developing a long-term financial plan for ASG, which will include a strategy for increasing revenue and containing costs. We provided the ASG with the first installment of \$1.1 million for a three-year program, in December 1994 (subject to future appropriations for two additional years), to hire Mercy International to co-manage the American Samoa hospital. Additionally, we have provided a substantial amount of technical assistance funds to improve financial management in American Samoa, including several hundred thousand dollars a year for training of accounting and management controls personnel under our Pacific Islands Training Initiative.

I must note for the subcommittee that in 1994, in its first assessment under the financial reporting requirements contained in the Chief Financial Officers Act of 1990, OTIA's financial statements received an unqualified opinion by Interior's Inspector

General. This means that OTIA's financial statements were reliable in all material respects and that the internal control structure provided reasonable assurance that assets were protected. OTIA is good at managing the taxpayer money granted to American Samoa for which it is responsible. Other federal agencies, however, encounter significant problems in American Samoa. These problems are likely associated with programs that provide loans to individuals or businesses in Samoa. At present, Interior and other agencies lack sufficient authority to deal more effectively with these other federal programs or with the ASG's deficit problems.

Until 1983, the Secretary of the Interior had plenary authority in American Samoa, including the tools to prevent fiscal crisis in the local government. In 1983, however, the Congress enacted a prohibition against the amendment of the Constitution of American Samoa by the Secretary of the Interior without approval of the Congress, 48 U.S.C. 1662a. Any effective Interior action aimed at controlling ASG deficits would likely run afoul of this provision. It is a question of the proper amount of authority to do the job.

I believe that the Administration's actions in the initiation of the American Samoa White-Collar Crime Assessment and Interior's assistance through the Joint ASG-DOI Working Group are a good beginning. It is time to move on with substantive action -- federal court jurisdiction, placement of audit and investigative personnel, and authority for effective deficit control. We look forward to working with the Subcommittee, the Department of Justice, and the ASG so that these important goals for good government in American Samoa can be achieved.

Testimony by

The Legislature of American Samoa

offered by

Honorable Savali Talavou Ale
Speaker of the House of Representatives

on the

Federal Bureau of Investigations Report:
American Samoa White Collar Crime Assessment
(Redacted Version, December 1994)

Mr. Chairman and Members:

Thank you for the opportunity to testify in regards to the FBI report: American Samoa, White Collar Crime Assessment (Redacted Version, December 1994). The term "Report" as used in this statement refers to that report, and "Team" means the FBI investigators who prepared it.

Request

The request for services of the FBI was made by Governor A.P. Lutali only after two months in office. It was prompted primarily by a Department of Interior, Office of Inspector General audit which projected a budget deficit of \$60 million by March 31, 1993. Under strong opposition and objections from the ASG Treasury, DOI-OIG reduced that deficit estimate down to \$30 million, and the author of that report soon left his post.

We want to point out that in 1983, a threat by DOI's Office of Territorial and International Affairs Director to replace the local Attorney General with his own man, to do exactly what Governor Lutali asked the FBI to do ten years later, led to the passage of 48 U.S.C. Section 1662(a) which is mentioned in the Report. That provision prevented the Secretary of Interior from unilaterally amending the Constitution of American Samoa. Had it not been for that provision, he would have amended the local constitution to give himself authority to hire and fire any and all local officials. It does appear that the request by Governor Lutali is a reversal of the past local attitude of guarding fiercely any and all measures of authority granted to the local government, from further federal intrusion.

The request was made soon after the change of local administrations, and immediately preceding a gubernatorial campaign that was very rough, almost bitter. For example, the defeated incumbent did not stay around for the inauguration.

When the new administration took office, there was a strong feeling that the huge deficit resulted from possible mismanagement and/or misappropriation of government funds by the previous administration. Prosecution was in the minds of the new team.

The Team and Sources

We do not know the criteria for selection of the Team sent by the Department of Justice to do the Assessment. Since we were not contacted and had no discussions with any of them, we have only the observations of some people they met, newspaper reports plus this Report to go by. It appears, as indicated in the Report, that the FBI picked up most of their factual information from previous studies and reports. They indicated the use of about 50. These dealt with a wide range of issues and problems in the Territory.

The Team reports having interviewed a number of people in and out of government. A listing of those interviewed would indicate the type and degree of reliability of source used for the report.

We believe the Team placed too much reliance on past reports, and accepted too much information from people they worked closely with, and gave too much credence to their information and feelings. And since the Team worked out of the Attorney General's Office, they appear to tread softly around the present AG, his staff, and his effort to pursue the investigation and prosecution of white collar crime. For example, the biggest

case of suspected fraud and embezzlement seen in this territory to date is the case of the closed Federal Credit Union for ASG Employees. The AG has had that case for years now. The FBI makes no mention whatsoever of that case, or why the AG has not moved for prosecution.

The Team praises the assistance of a certain investigator whom they declared to be exceptionally qualified, having been in law enforcement since 1975. In a recent court appearance as a witness, the same officer, when asked about the number of cases he had successfully investigated in his career responded: "One".

One of the Team members had worked in American Samoa previously, and we strongly suspect that she arrived this second time with preconceived ideas about the situation in the Territory.

Assessment of Current Criminal Justice System

We believe the Team is near accurate in its assessment of the system. The uncertainty of the ranking of "common law" versus local "custom" has never been an issue in the Territory. As to the effect of "ifoga" in local court cases, it should be pointed out that the local population does not believe the ancient custom, esteemed and solemn as it is, has any effect on the outcome of criminal court cases. If performed these days, it is simply a social gesture expressing penitence, showing that performers have class, in purely customary terms.

The lack of adequate prison facilities is a fact which the Territory began to address some time ago. A site for the new prison has been tentatively selected. Comments

about the low pay of officers and the continual reorganization of the Department of Public Safety are on par. Despite criticisms of the South Pacific Islands Criminal Intelligence Network (SPICIN), the fact is it has become a very important tool in police work in the islands.

The so-called "problematic" relations between the Attorney General's Office and the Department of Public Safety recognized by the Team, has existed for as long as the two have been separated. Blame on the lack of successful prosecution has always been levelled at the DPS investigators. The latter blames the ineffectiveness of prosecutors, and complain when cases investigated and referred for prosecution are held up indefinitely.

Political Connections

The current report repeats a charge by the DOI's Inspector General that the AG in the Territory declined to prosecute cases where the subject had "political connections". We feel the FBI should have cited examples, not just repeat an unsubstantiated charge. For a developing territory, one trying to learn how to do that which is right, the FBI report is most damaging in that it paints a picture of a territory in the solid grip of "politicians". That is clearly not the case. Two former Attorney General's were interviewed in preparation of this statement. Both deny vehemently any sort of political influence in their prosecutorial decisions.

The inference is made (p.16) that the hiring of the former Delegate to Congress Fofa I.F. Sunia, by the Legislature was politically inspired. Nothing could be further from

the truth. Mr. Sunia was hired by former House Speaker Tuanaitau F. Tuia and the present President Letuli Toloa. He fills a vacancy left by the death of longtime Legislative Research Bureau official, Mr. Va'alele Ale. President Letuli and Speaker Tuia felt, and I completely concur, that Mr. Sunia had the unique qualifications not only to fill that slot but to apply his experiences in the field of legislation to upgrading the system. Let me say that we have been pleased with his work, and in fact, he has assumed more than we originally agreed on. I can unequivocally state that NO political influence whatsoever was brought to bear on this appointment.

Again, Mr. Chairman and members, let me make the point of preconceived ideas. We believe the writer of the FBI report had notions before arriving and cared not to investigate and learn the real facts. Neither legislative leader was interviewed on this issue. No effort was made to interview Mr. Sunia or learn the exact nature of the work he does.

Still under the heading of "Assessment", the FBI report states (p 17) that "A number of investigations were stopped at the order of superiors without explanation. In other matters where the investigations were completed and referred to the Attorney General's Office for prosecution, the cases were declined for unexplained reasons." This is a very serious charge, one that should either be substantiated, or be the cause of an apology on the part of the report author. It might be true. But standing alone without examples makes it hard to accept. One can only conclude that the Team is bent on painting the picture of a small community, as sometimes depicted in TV shows, that is under the complete control of local politicians. Whatever politician obstructed justice

should be revealed so that all of us practitioners of the art are not collectively blackened, and the good name of the people of American Samoa is not muddied.

Fa'a Samoa

This is the worst, and the most "made up" part of the FBI report. The Team clearly has a gross misunderstanding of the "Faa-samoa" (the Samoan way of life). Perhaps they read too many reports about it, and failed to appreciate the changes of lifestyles that exist today, changes in education, exposure to stateside living and a hoard of other factors which have affected the way we live. Again, statements without concrete evidence and examples abound in this part of the report. For example:

- Which government contract was awarded on preference for a relative? If such ever happened here, is that unique to Samoa?
- What investigation was dropped or crime overlooked by DPS because of the influence of an important family? The report fails to make mention of the fact that the sister and daughter of a former DPS Commissioner Tuilefano Vaela'a were prosecuted, sentenced and fined - during that commissioner's term!
- What lenient plea bargains were made by the Attorney General's Office? What prosecutions were declined?
- Which juries were partial? Does the Team know that finding impartial juries is nothing unique to American Samoa? Perhaps they should have waited till after the OJ Simpson jury selection before filing their report. It is the job of prosecutors to determine the partiality stance of each juror, and that means knowing something about their family

relationships. They cannot hide behind "not knowing anything about extended families."

Communal Ownership

The team sadly misunderstands the concept of communal ownership, as it exists and is practiced in Samoa today. Please believe that the people of this territory know the difference between government property and private possessions. To make the statement that some of us believe the communal ownership extends to government property indicates serious misunderstanding or else a case of simple gullibility. "Many believe that Fa'a Samoa lies at the heart of the ASG's financial problems." To include a statement such as that in an official FBI report is preposterous. Mr. Chairman, there is no credence at all to that statement. Fa'a Samoa has exactly zero bearing on the financial situation of our government. Neither the fa'aSamoa nor the communal ownership system has anything to do with it.

It is unfortunate that the Team found grounds for their conclusions partially in a book written by a white woman 35 years ago about Samoan values.

The Team further cites a letter written by Senator Moaaliitele (p. 19) as indication of local belief that federal law enforcement standards should not apply here. The senator told us in an interview for this statement, that his anger was directed at the AG for casting suspicion on the good name of his family. The matter investigated was trivial and suspicions were blown up because of the mention of his family name. Again, Mr. Chairman, this is another incident of the political blindness of local law enforcement officials. The AG had no qualms about investigating a senator and his family.

Fono audit

The report attempts to paint a picture of a Legislature which refuses to be audited. The fact is, the local audit was sudden and our staff was not adequately prepared to respond to the auditors in a meaningful and useful manner. It must be stated also that all of the paperwork involving finances of the Legislature is doubly filed at both the Legislature and the Treasury Department of ASG. The latter has more complete and up to date files.

In the case of the OIG audit, the Legislature wanted to be sure of the statutory basis and the procedure which triggers the audits. It was not a case of stalling as the press and the FBI report allude. The OIG audit did take place and their findings have yet to be reported.

Conclusion

In conclusion, we wish to state with all emphasis that there is no sinister "political" power exerted by any individuals or families in this American community. We can understand how the FBI can easily get that conclusion. They spent time in the company of a few opinionated people, mostly expatriates who for some unknown reason, continue to live in a place they detest.

Neither is there a "hold" by our fa'a Samoa on the criminal investigatory and prosecution procedures of the government. If there is merit to that charge, the individuals concerned should be the target, and not the Samoan system.

In the recent years, a member of the Legislature from a large and powerful

Samoan family was prosecuted, unsuccessfully so was a bank president who is a member of a prominent local family. Likewise were the Director of Parks and Recreations who was acquitted and the Director of the Territorial Office of Aging who was found guilty and is still in prison. We fail to see, in the face of those facts, how the FBI can conclude that "powerful families" and local "political powers" exert undue influence on the system.

It is a fact that certain investigations have gone on for a long period without any move to prosecution. In such cases, the personal decision of the Attorney General is the determining factor, not the "fa'aSamoa" or the "communal system" of living. (All those AG's received their legal training in the United States.)

If the FBI seriously believe in their findings of influence of "fa'a Samoa" and a hold by politicians on the criminal justice system, then we must conclude that they have wasted a great opportunity to make a meaningful contribution to solving the problem.

AMERICAN SAMOA WHITE - COLLAR CRIME ASSESSMENT



**DECEMBER 1994
(Redacted Version)**

ASSESSMENT OF WHITE-COLLAR CRIME IN AMERICAN SAMOAI. FOREWORD

In a March 1993 letter to the Secretary of the U.S. Department of the Interior (DOI), American Samoa Governor A.P. Lutali requested assistance from DOI in obtaining federal investigators and a prosecutor to review the results of an audit being conducted by DOI's Office of the Inspector General. The audit projected a \$60 million deficit in the budget of the American Samoa Government (ASG) by March 31, 1993. Governor Lutali suggested that the Department of Justice (DOJ) detail two Federal Bureau of Investigation (FBI) agents and a DOJ prosecutor to American Samoa "to serve as special investigators and a special prosecutor under local law" for the purpose of "conduct[ing] whatever civil and criminal prosecutions may be warranted." (See Appendix A.)

As a result of this request, and pursuant to Title 48, United States Code, Section 1666, DOI, DOJ and ASG entered into a "Technical Assistance Memorandum of Understanding Among Office of Territorial and International Affairs, Department of the Interior, and Department of Justice and Government of American Samoa for Assessment of Crime Situation and Need for Investigative/Prosecutorial Assistance" (MOU). The MOU, signed in December 1993, provided that DOJ would send a team of two FBI Special Agents and one DOJ attorney to American Samoa for a period of 90 days to work with ASG officials in assessing (1) the extent and nature of the white-collar crime problem, and (2) the need for investigative and prosecutorial assistance to supplement local capabilities. The MOU further provided that the team would prepare a report with short-term and long-term recommendations for review by DOI, DOJ and ASG in addressing solutions to the crime problems, including any legal impediments/implications of implementing the recommendations. (See Appendix B).

The DOJ assessment team included FBI Special Agents Kathleen M. Anderson and Leland C. Giannini (San Francisco and Dallas Divisions, respectively) and Assistant U.S. Attorney Ronni B. McLaren of the U.S. Attorney's Office for the Central District of California (Los Angeles).

The assessment team arrived in American Samoa on February 9, 1994. Working out of the Attorney General's Office in the village of Utulei, the team spent three months conducting extensive interviews of persons in the public and private sectors, reviewing reports of past audits and other pertinent studies of the territory's finances, evaluating the operations and procedures of the Department of Public Safety and the Attorney General's Office, reviewing case files of pending and prior white-collar investigations and prosecutions, reviewing and

researching territorial and federal law, observing court proceedings, etc. The results of this assessment are forth in the report which follows.

The report begins with the Executive Summary and Recommendations of the assessment team. The body of the report contains a brief overview of American Samoa's political and cultural history, geography and people, economy and government structure; a discussion of the role of DOI in the administration of the territory; an overview of the American Samoa criminal justice system, including its laws and courts; an evaluation of the Attorney General's Office and the Department of Public Safety; a case study of a recent white-collar crime prosecution; an inventory of suspected and documented incidents of white-collar crime in American Samoa (most of which involve the misuse and abuse of federal and local funds within the ASG Departments); an analysis of ASG's finances, including a summary of the findings and recommendations of over fifty audits; and a summary of investigative hearings held by the American Samoa legislature on issues relating to white-collar crime.

The assessment team wishes to thank Governor Lutali and his staff for their warm reception and hospitality throughout the team's stay in American Samoa and for ensuring the cooperation of ASG officials in his administration. From DOI, the team wishes to thank Assistant Secretary Leslie M. Turner for her support and Lydia Faleafine, Field Representative for the Office of Territorial and International Affairs, for her on-site assistance in arranging interviews and providing important background material for the assessment. Finally, the team extends its sincere appreciation to Attorney General Malaetasi M. Togafau and the members of his Office, particularly Chief Investigator J. Craig Keener, for providing a well-equipped and friendly working environment for the team.

II. EXECUTIVE SUMMARY

A. Mission of the Assessment Team

Pursuant to a December 1993 Memorandum of Understanding among the Office of Territorial and International Affairs (OTIA) of the Department of the Interior (DOI), the Department of Justice (DOJ), and the American Samoa Government (ASG), a team consisting of two Federal Bureau of Investigation (FBI) Special Agents and one DOJ prosecutor was detailed to the islands of American Samoa for a period of ninety days to assess the problems of white-collar crime¹ in the territory.

American Samoa consists of seven islands in the eastern South Pacific, located approximately 2,300 miles southwest of Hawaii and 1,600 miles northeast of New Zealand. It is the smallest U.S. territory (76.2 square miles) and the only U.S. possession south of the equator. Its present population is approximately 51,000, over ninety percent of whom are ethnically Samoan.

The DOJ assessment team included FBI Special Agents Kathleen M. Anderson and Leland C. Giannini (San Francisco and Dallas Divisions, respectively) and Assistant U.S. Attorney Ronni B. MacLaren of the U.S. Attorney's Office for the Central District of California (Los Angeles). The team was stationed in American Samoa from February 9, 1994 to May 8, 1994. During that time, the team interviewed dozens of current and former ASG officials, including the Governor and Lieutenant Governor; the three District Governors; the Directors and other officials of each of the Departments of the Executive Branch; legislators in the American Samoa Senate and House of Representatives; the Chief Justice, Associate Justice and Associate Judges of the High Court; the Judge of the District Court; the Court Clerk, Probation Officers and other court personnel; the Attorney General, Deputy Attorney General and Assistants Attorney General; and the Commissioner, Deputy Commissioner and officers of all ranks in the Department of Public Safety. The team also interviewed many individuals outside the government, including village chiefs, local residents, U.S. citizens working under contract with ASG, owners of local businesses, and attorneys practicing in the local courts.

In addition to conducting these interviews, the assessment

¹ As used in this report, the term "white-collar crime" describes a variety of illegal acts carried out by nonviolent means and generally involving deception, concealment, fraud and embezzlement in order to obtain, or avoid the loss of, money, property or other things of value or to obtain business or personal advantage.

team reviewed more than fifty audit reports and other studies of the territory prepared over the last ten years by DOI, the U.S. General Accounting Office, the Federal Emergency Management Agency, ASG Department of Legal Affairs, ASG Department of Public Safety, ASG Department of the Treasury, ASG Economic Development Planning Office, the American Samoa legislature and the accounting firm of Deloitte & Touche. The team also evaluated the operations and procedures of the Department of Public Safety and the Attorney General's Office, reviewed case files of pending and prior white-collar crime investigations and prosecutions, monitored court proceedings of current white-collar crime prosecutions, and researched territorial and federal law relating to issues of jurisdiction.

Prior to the commencement of this assignment, the assessment team was directed by DOI and DOJ to focus its study as follows:

1. Assess the current criminal justice system in American Samoa, including the process by which a case goes through the system, the system's strengths and weaknesses and the adequacy of statutes and procedures in dealing with the white-collar crime problem;
2. Assess the current white-collar crime problem in American Samoa;
3. Assess the adequacy of the current system in addressing the existing white-collar crime problem;
4. Assess the training needs of American Samoa law enforcement and prosecution personnel; and
5. Make recommendations on how the American Samoan system can be improved.

Each of these areas is dealt with separately below.

B. Assessment of the Current Criminal Justice System in American Samoa

1. Sources of Law

American Samoa has been a territory of the United States since 1900. From 1900 until 1951, it was under the control of the Department of the Navy. Since then, it has been under the administration of DOI.

American Samoa is an unincorporated, unorganized territory. It is "unincorporated" because only the fundamental provisions of

the U.S. Constitution apply.² It is "unorganized" because Congress has not provided it with an organic act, under which all provisions of the U.S. Constitution would apply except those which are impractical and anomalous. Those U.S. statutes and treaties that expressly state that they apply to territories of the United States are part of the law of American Samoa.

In 1960, DOI promulgated a Constitution for American Samoa. This Constitution was revised in 1966 by a constitutional convention in the territory. In 1967, after approval by the voters of American Samoa in a referendum, the Revised Constitution was acceded to by the Secretary of the Interior. (The legal force of the Revised Constitution derives from the fact that it was approved and promulgated by the Department of the Interior.) In 1983, Congress enacted Title 48, United States Code, Section 1662, permitting modification of American Samoa's Revised Constitution only by an act of Congress.

Congress has not set sources of law for American Samoa. A statement of the sources of law for American Samoa is contained in Title 1 of the American Samoa Code. These sources of law are the American Samoa Constitution, the U.S. Constitution, U.S. and Samoan statutes, the common law and custom.

The Fono, American Samoa's bicameral legislature, may enact laws on matters of local application, and regulations may be issued pursuant to those laws, provided that the laws are consistent with the Constitution of American Samoa, fundamental provisions of the U.S. Constitution, and applicable laws of the United States. The statutory law of the territory is codified in the American Samoa Code.

Article I of the Constitution of American Samoa enumerates certain individual civil rights, including the separation of church and state; freedom of religion, speech, assembly, and the press; the right to petition the government for redress of grievances; the prohibition against the deprivation of life, liberty, or property without due process of law; and the requirement of just compensation when private property is taken for public use.

² It is up to the Samoan and federal courts to determine, on a case-by-case basis, which provisions of the U.S. Constitution are fundamental. The right to a jury trial has been defined as fundamental in cases arising in American Samoa. See King v. Andrus, 454 F. Supp. 11 (D.C. 1977). In cases arising in other U.S. territories, the federal courts have defined as fundamental the right to the writ of habeas corpus, protection against unreasonable searches and seizures, and the right to just compensation.

Article I of the American Samoa Constitution also recognizes and supports the chiefly and communal aspects of "Fa'a Samoa" (the Samoan way of life). Section 3 states that it is the policy of the government of American Samoa to protect persons of Samoan ancestry against alienation of their lands and the destruction of the Samoan way of life and language contrary to their best interests.³ Section 1.0202 of the American Samoa Code reiterates the constitutional declaration that Samoan custom be preserved, and Section 1.0201 provides that courts can use the common law only if it is "suitable to conditions in American Samoa," thus suggesting that custom should rank above the imported common law. However, Section 1.0202 further provides that custom is a source of law only to the extent that it does not conflict with the "laws" of American Samoa or "laws" of the United States that concern American Samoa. Hence, it is unclear whether the drafters of the code intended to place custom above or below the imported common law.

2. Court System

American Samoa's court system is provided for in the American Samoa Constitution; it is not part of the federal judicial structure.

Article III of the American Samoa Constitution vests the judicial power in a High Court, District Court, and such other courts as may from time to time be created by law. Village Courts have been created by statute under this provision.

The Chief Justice and the Associate Justice of the High Court are appointed by the Secretary of the Interior and hold office during good behavior subject to removal for cause. The Governor appoints associate judges of the High Court who are recommended by the Chief Justice and confirmed by the American Samoa Senate. Associate judges hold office during good behavior until age sixty-five, and are typically Samoan leaders with a knowledge of local customs. The District Court judge is appointed by the Governor on recommendation of the Chief Justice and confirmation by the American Samoa Senate, and holds office during good behavior.

Appeals from the trial division of the High Court and from

³ In the instruments through which the United States obtained sovereignty over American Samoa, the United States agreed to "respect and protect the individual rights of all people . . . to their lands and other property." (Cession of Tutuila and Aunu'u, April 17, 1900). The United States also promised "that the rights of the chiefs in each village and of all people concerning their property according to their custom shall be recognized." (Cession of Manu'a Islands, July 14, 1904).

the District Court are heard by the appellate division of the High Court, which consists of the Chief Justice and Associate Justice, acting associate justices appointed by the Secretary of the Interior, and all the associate judges. There is no direct appeal from the High Court to any other court, although a collateral attack on decisions of the High Court may be made by bringing suit against the Secretary of the Interior in the District of Columbia, provided the appellant can raise a valid question under U.S. law. King v. Morton, 520 F.2d 1140, 1144 (D.C. 1975). Hence, although the federal judiciary machinery does not in general extend to American Samoa, a case arising in Samoa that raises appropriate federal or constitutional questions may come within the jurisdiction of the federal judiciary.

3. Criminal Law and Procedure

The High Court has jurisdiction over criminal felony cases, while the District Court has jurisdiction over minor criminal cases. Criminal prosecutions are brought in the name of the Government of American Samoa by the Attorney General. Prosecution of felonies may be initiated only by criminal information, but misdemeanors may be prosecuted by complaint or by criminal information.

Under Title 3, Chapter 1 of the American Samoa Code, criminal cases may be prosecuted and tried only in a court having territorial jurisdiction over the place where the crime was committed.

Section 46.1910 of the American Samoa Code provides that criminal procedure in the High Court and District Court shall conform as nearly as may be practical to the U.S. Federal Rules of Criminal Procedure.

Title 46 of the American Samoa Code classifies crimes as felonies and misdemeanors, each having four grades. Offenses are categorized as follows: those against the person, family, public order, property, and the administration of justice; sexual offenses; offenses involving prostitution, abortion, gambling, pornography, and weapons; offenses affecting government; and miscellaneous offenses.

A person charged with an offense carrying a maximum possible punishment of over six months imprisonment has the right to be tried by a jury of six persons, whose verdict must be unanimous.⁴ One of the High Court justices presides and rules on all questions of law. Two associate judges also sit with the

⁴ The provisions of the U.S. Constitution requiring a jury trial have been held to apply to criminal trials in American Samoa. King v. Andrus, 454 F. Supp. 11 (D.C. 1977).

justice.

A person convicted of a felony or misdemeanor may be sentenced to imprisonment; a fine; suspension of imposition of sentence, with or without probation; suspended execution of sentence with probation; detention as a condition of probation; or ordinary labor. American Samoa Code, Section 46.1910 provides that, except in first degree murder cases, the court may reduce the extent or duration of a defendant's sentence or the level of the crime if an ifoga ceremony (the Samoan custom of public apology) has been performed. The ifoga presented to the family of a deceased or an injured person by the family of a wrongdoer is not meant as compensation for the family but primarily as an expression of sorrow and apology. Despite the statutory requirements, judges have recently refused to grant significant reductions in sentences on account of the ifoga ceremony because the ceremony is performed by the family of the accused, not by the accused personally.

There is only one correctional facility in American Samoa. All levels of offenders who receive a sentence of imprisonment are incarcerated at the Tafuna Correctional Facility (TCF). TCF is under the administration of the Department of Public Safety. It can hold up to approximately eighty-five inmates. As of mid-1994, there were fifty-two inmates detained at TCF, seven of whom were awaiting deportation and ten of whom were awaiting court proceedings.

The most serious problem at TCF is its lack of adequate security. The facility is located in a residential area of Tutuila Island, adjacent to the government-subsidized housing for ASG employees. The fence surrounding the facility is only twelve feet high and the entrance gate, leading from the main highway, usually remains open. Home and work release programs are liberally granted by the courts, even to inmates serving sentences for violent crimes. There have been incidents in the past where inmates convicted of violent crimes have committed additional violent crimes while on home or work release.

There is no facility in American Samoa for juvenile offenders. With fifty percent of the territory's population under the age of eighteen, the issue of juvenile delinquency is becoming increasingly pressing.

4. Department of Public Safety

The Department of Public Safety (DPS) became an independent department of the ASG Executive Branch in 1971. Prior to that time, it was part of the Attorney General's Office. DPS has jurisdiction over police services, corrections, fire services, emergency management, highway safety and motor vehicles.

At the time of this assessment, DPS was being reorganized into the following seven bureaus:⁵

1. Special Operations
2. Fire Services
3. Corrections
4. Motor Vehicles and Highway Safety
5. Support Services
6. Uniformed Services
7. Criminal Investigations

The Commissioner of DPS is appointed by the Governor of American Samoa and serves at his discretion. The current Commissioner is Fonoti D. Jessup, a 28-year veteran of DPS and a FBI National Academy graduate. He is the third person to hold the position of Commissioner in the present administration. The first appointee's term was cut short by his conviction in a California court for embezzling police funds while previously employed as a Los Angeles Police Department lieutenant. He was succeeded by Governor Lutali's brother, Julius Lutali, who recently retired as Commissioner.

DPS has approximately 234 employees: 103 officers (an average of one officer for every 494 residents) assigned to patrol services; thirty-six officers assigned to investigative and administrative duties; twenty-three corrections officers; thirty-two fire personnel; and forty civilian employees.⁶

DPS has a number of fundamental problems affecting not only its ability to handle white-collar crime investigations, but also its law enforcement responsibilities in general. Its officers are among the lowest-paid ASG employees. The DPS administrative offices are in serious disrepair and lack certain basic law enforcement features, such as holding cells for prisoners, interview rooms, and evidence processing and storage rooms.

The department suffers from continual reorganization and personnel reassignment. When a newly-elected Governor appoints a new DPS Commissioner, the new Commissioner in turn appoints new deputies and ranking chiefs, resulting in a major upheaval of personnel responsibilities every four years. There is so much confusion that some officers are unaware of their own classifications within DPS. Most believe that promotions are based on favoritism rather than merit.

White-collar crime investigations are handled at DPS by the

⁵ DPS General Order No. 1-93 (Dec. 8, 1993).

⁶ The American Samoa Police Hiring Supplement Program Application to the DOJ Bureau of Justice Assistance (Dec. 1993).

Special Task Force on Narcotics and White-Collar Crime. This task force was formed by executive order in 1986. As originally conceived, the Special Task Force was to consist of representatives from DPS, the Attorney General's Office, the Customs Division of American Samoa's Department of the Treasury and the U.S. Drug Enforcement Administration. In practice, however, the Special Task Force has not been a multi-agency, multi-jurisdictional operation, but rather, has evolved into a separate unit of DPS which handles mostly drug investigations.

The assessment team heard widespread complaints about the manner in which DPS administers the South Pacific Islands Criminal Intelligence Network (SPICIN). SPICIN is an organization of twenty-one South Pacific nation law enforcement agencies, formed for the purpose of collecting and sharing criminal intelligence. Headquartered in American Samoa, SPICIN has access to various law enforcement databases, including NCIC, NLETS, EPIC, WSIN and Interpol, which are maintained in a locked room at DPS. The only persons with access to these databases are Deputy Commissioner Michael Sala, his administrative assistant, two DPS officers assigned to SPICIN and two clerical employees.

[REDACTED]

[REDACTED]

[REDACTED]

Relations between DPS and the Attorney General's Office are problematic. Most of the prosecutors in the Attorney General's Office do not have confidence in the ability of DPS to investigate cases properly. Upper management of DPS and the Attorney General's Office have a mutual distrust of the other's political motives. Obviously, this kind of relationship makes it difficult for investigators and prosecutors to work together as a team.

Finally, there is some concern about incidents of police brutality. While the assessment team was in American Samoa, there was an incident of alleged police brutality where a suspect's jaw was broken during a routine arrest. A far more serious incident occurred in 1992 where a suspect was beaten to death by DPS officers. Seven DPS officers were convicted of charges including third-degree assault, negligent manslaughter, and tampering with evidence. Many blame the death on a failure to supervise younger officers. Cases such as these reflect a serious need for basic training and better supervision of officers.

5. Department of the Interior, Office of Inspector General

The Insular Areas Act of 1982 (Title 48, United States Code, Section 1422) provides DOI's Office of Inspector General (OIG)

with the responsibility and authority to audit ASG's accounts pertaining to revenues, receipts, and expenditures of funds and property (a function previously performed by the U.S. Government Comptroller). OIG conducts periodic reviews of the government's financial operations and reports its findings and recommendations to the Governor of American Samoa as well as to DOI and the U.S. Congress.

The basis for OIG's investigative authority in American Samoa is the Inspector General Act of 1978, which authorizes OIG to conduct audits and investigations relating to the programs and operations of DOI. Thus, investigative leads developed by OIG audits are examined by OIG only if they relate to DOI's programs or operations. OIG's authority to investigate criminal violations is derived from various sections within Title 18 of the United States Code, as they pertain to OIG's oversight of DOI's programs and employee misconduct. OIG has authority to issue administrative subpoenas; however, enforcement of such subpoenas is hindered by the absence of a federal district court in American Samoa.

For a short period of time, from October 1985 to April 1987, OIG maintained a field office in American Samoa staffed by one Special Agent. The agent conducted numerous white-collar crime investigations during the eighteen months that the office was open. Although the plan in setting up the office was for the agent to provide training in white-collar crime investigations to DPS officers, little, if any, training occurred and the agent conducted his investigations without assistance from DPS. The OIG investigations resulted in several successful prosecutions which were brought by the Attorney General's Office in the High Court, including stealing and embezzlement convictions of the president of the Development Bank and a bank attorney as well as the embezzlement conviction of the Ili'ihi Golf Course bookkeeper. However, the Attorney General's Office took no action on any of the investigations conducted by the OIG agent involving ASG Department Directors.

After leaving his post in American Samoa, the OIG Special Agent cited numerous investigative obstacles he had encountered in the territory, including the lack of authority to issue an investigative (grand jury) subpoena and the inability to enforce an administrative subpoena without a federal court in the territory. Thus, the only practical method for the agent to obtain necessary evidence was through search warrants.

According to OIG, the decision to close the field office was based primarily on a cost-benefit study which concluded that it would be less expensive to conduct the required audits by paying personnel from OIG's Western Regional Office on a per diem basis. For purposes of this report, however, a far more important consideration by OIG in its decision to close the field office

was its perception that the Attorney General of American Samoa was declining cases investigated by OIG where the subject had "political connections."⁷ Many believe that white-collar crime became an even bigger problem in American Samoa after the OIG field office was closed.

6. Attorney General's Office

The Attorney General's Office is part of the ASG Department of Legal Affairs.

The Attorney General is appointed by the Governor and serves at his discretion. The current Attorney General, Malaetasi M. Togafau, was appointed by Governor Lutali in January 1993.

As of mid-1994, the professional staff of the Attorney General's Office included a Deputy Attorney General and nine Assistants Attorney General. All but one of the Assistants were non-Samoans hired from off-island under two-year contracts with ASG. Their experience levels ranged from four to twenty years. None had significant prior experience in federal court. A number of the attorneys were working under renewed contracts and, thus, had been in the Office longer than two years. However, with a staff of less than ten attorneys working under short-term contracts, the turnover rate among the Assistants tends to be fairly high.

Salaries for Assistants Attorney General currently range from \$28,000 to \$39,000. Attorneys working under ASG contracts receive subsidized housing.

As of mid-1994, the criminal matters in the Office were divided among five Assistants. One Assistant handled exclusively juvenile offenses; another Assistant handled exclusively sex crimes and child abuse; and the remaining three Assistants handled a variety of other crimes. There were not enough white-collar crime cases to keep any one of these Assistants occupied full time.

The staff also includes four investigators, three of whom have had some formal training in conducting criminal investigations.

Prosecution of white-collar crime under Attorney General Togafau has received a higher priority than it did in past

⁷ GAO Report on American Samoa: Oversight Hearing Before the Subcomm. on Insular and International Affairs of the House of Representatives Comm. on Interior and Insular Affairs, 102d Cong., 2d Sess. 133 (May 19, 1992) (statement of Joyce N. Fleischman, Deputy Attorney Inspector, Department of the Interior).

administrations. In the last year, despite investigative hurdles, the Attorney General's Office has successfully prosecuted a number of former ASG officials and employees, including the former Director of the Territorial Administration on Aging (TAOA) and the former Deputy Director of the Department of Parks and Recreation.

In March 1994, Attorney General Togafau issued a press release stating:

Stealing from the government is a crime that not only adversely affects the services provided to our people, but crumbles the integrity of government and trust in leadership. Some say that misuse and theft of government funds and property is generally accepted and a natural aspect of the American Samoa Government. This is simply not true.

It is true, however, that the detection, investigation and prosecution of white collar crimes and government corruption have not been as much of a priority to this government in the past as it should have been.

It is also not true that prosecution of these crimes can be construed as politically motivated. Regardless of one's political affiliation, if a crime is committed, those responsible should be held to answer. Be assured that times have changed and that during my tenure as Attorney General, I will vigorously prosecute corruption in government.

As of the drafting of this report, the Attorney General's Office had several pending white-collar crime investigations, including [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Attorney General's Office has recently proposed the formation of a joint task force with DPS for the investigation and prosecution of white-collar crime. The task force would operate under a formal written agreement between the Attorney General's Office and DPS and would include three investigators and a prosecutor from the Attorney General's Office, four DPS officers and two support personnel. The task force would be headed by J. Craig Keener, the chief investigator at the Attorney General's Office. Mr. Keener is exceptionally well-qualified to lead the task force. He has been in law enforcement since 1975.

Prior to joining the Attorney General's Office, he was a DPS officer in American Samoa and, before then, a police officer in Mill Valley, California. (Mr. Keener is also the grants program coordinator for the Attorney General's Office and would continue to spend approximately half of his time working in that capacity).

7. Office of Independent Counsel

The Office of Independent Counsel was established in 1987 by an executive order of the Governor. The order provides that whenever the Attorney General receives information sufficient to constitute grounds to investigate the violation of any criminal law of the territory, or applicable federal criminal law (other than a misdemeanor or infraction), and the Attorney General determines that the investigation or prosecution by the Attorney General may result in a personal, financial or political conflict of interest, the Attorney General shall petition the Governor for the appointment of Independent Counsel. To be eligible for the position of Independent Counsel, the person must be learned in the law, a member in good standing of the American Samoa Bar Association, and not employed by the ASG in a salaried position. The Independent Counsel has the authority to exercise the same investigative and prosecutorial functions and powers as an Assistant Attorney General.

To date, there has been only one appointment of an Independent Counsel. This occurred in December 1987 when Governor Lutali appointed Independent Counsel to investigate the Agricultural Damage Survey Report expenditures under FEMA following Hurricane Tusi. The basis for the appointment was the potential conflict of the Attorney General arising from his position as the Emergency Management Coordinator and State Coordinating Officer of the FEMA program.

The Independent Counsel's final report, dated March 7, 1988, concluded that there was probable cause to believe that crimes had been committed by persons associated with the Agricultural Replanting and Breeding Stock Replacement Damage Survey Report. The report further concluded that there was no apparent conflict of interest which would prevent the Attorney General from diligently prosecuting the illegal acts. However, for reasons unknown to the assessment team, no prosecutions ever resulted from the investigation.

C. Assessment of the Current White-Collar Crime Problem in American Samoa

1. Sources of Information

There are no reliable statistics regarding white-collar crime in American Samoa. Indeed, there is very little published

information on crime in general in the territory. American Samoa has not provided reliable crime statistics to the FBI for inclusion in the Uniform Crime Report since 1985. The latest statistics reported by DPS indicate that as of 1992, disorderly conduct and assault were the most frequently committed offenses in American Samoa.

The absence of crime statistics probably stems from the fact that DPS has no systemized recordkeeping and, until very recently, the same was true for the Attorney General's Office.⁸ While DPS keeps a manual record of incidents that are reported to the police department, it does not maintain a record of the ultimate disposition of these incidents. Similarly, until a few months ago when a computerized recordkeeping system was installed, the Attorney General's Office kept only a manual log of matters which DPS referred for prosecution, but no record of the final disposition of these matters. Thus, it was nearly impossible for the team to track the history of any particular case. In addition, there appears to be little reconciliation between the records of DPS and those of the Attorney General's Office. For example, DPS records indicate that there were 235 incidents of larceny reported in 1992, while the records of the Attorney General's Office show that DPS referred only six cases of larceny for prosecution in 1992.

The source of most of the information about white-collar crime contained in this report was from interviews conducted by the assessment team. However, because the team lacked any authority to compel people to provide information, it had to rely solely on voluntary cooperation. The interviews were not conducted under oath and, thus, do not have the same reliability as sworn statements. A number of people refused to cooperate because they feared reprisal from government officials. While some of the interviewees had firsthand knowledge of wrongdoing, others had information based primarily on hearsay. Given the time constraints, the team was not able to verify all of the information contained in this report. The team made a concerted effort to ferret out any unsubstantiated rumors and, whenever possible, to corroborate hearsay information through other sources.

..

⁸ In mid-1994, the Attorney General's Office installed a computer program called "DA's Assistant" which will allow the attorneys to keep track of matters referred for prosecution, the status of pending investigations and prosecutions, and the final disposition of matters.

2. Reported Incidents and Allegations of White-Collar Crime

The most significant white-collar crime prosecution of an American Samoan to date was in August 1988 when Fofo I.F. Sunia, the delegate to the U.S. House of Representatives, was convicted in district court in Washington, D.C. of engaging in a payroll-padding scheme. Despite this conviction, Sunia was welcomed back into government service by ASG.

Clearly, as reported in interview after interview, most of the white-collar crime in American Samoa involves the misuse and theft of government funds and property. There are allegations of government fraud involving almost every ASG Department. The amounts allegedly stolen range from minuscule sums to the millions. The incidents of such crime revealed to the assessment team are set forth in Section XVI of this report. While the team believes that each of the incidents is based on reliable information, for the reasons stated above, none should be viewed as documented proof that a crime in fact occurred.

The assessment team found sufficient allegations of criminal activity to predicate the initiation of criminal investigations of individuals in the American Samoa House of Representatives and the following ASG Departments:

Department of Agriculture
Office of Economic Development and Planning
Department of Education
Department of Legal Affairs, Immigration Office
Department of Health Services
Department of Parks and Recreation
Department of Port Administration
Office of Procurement
Department of Public Safety, Corrections Bureau and Bureau of Motor Vehicle and Highway Safety
Department of Public Works
Territorial Administration on Aging
Department of the Treasury

Many of the allegations centered on conflicts of interest in the awarding of government contracts to individuals who were related, either directly or through extended families, to the officials approving the contracts. Other allegations involved the abuse of government funds, such as questionable travel expenses or the use of government manpower and materials for personal benefit.

Many of the allegations were apparently reported to DPS, the Attorney General's Office, the Fono, and the Governor's Office. The local newspapers printed stories detailing the alleged wrongdoing as well. Despite this public awareness, very few

investigations were ever initiated.

In a number of cases where it was clear that an ASG official had embezzled money from the government, rather than prosecute the guilty official, the person was simply terminated from office. In at least one instance, the individual was actually reassigned to another government position.

In the instances where DPS did open an investigation, few resulted in prosecution. A number of investigations were stopped at the order of superiors without explanation. In other matters where the investigations were completed and referred to the Attorney General's Office for prosecution, the cases were declined for unexplained or questionable reasons.

3. Contributing Factors to the White-Collar Crime Problem

a. Lack of Accountability

Many of the past audits of ASG finances revealed problems which warranted further examination or investigation and should have resulted in prosecution of some of the offenses cited in this report. However, more often than not, the audits merely recommended ways in which funds should be disbursed in the future and requested ASG to reimburse the disallowed expenses. Although ASG has developed financial recovery plans in the past, subsequent audits indicate that key elements of the plans were never implemented.

Almost every audit report and study of ASG finances in the last ten years has concluded the same thing: there is no effective system of checks and balances in the ASG infrastructure, creating an environment in which there is little accountability.⁹ Coupled with inadequate oversight by the Department of the Interior and other federal departments/agencies providing money to the territory, the result has been a local government in which fraud and abuse is allowed to continue unchecked while financial conditions worsen. Despite these compounding problems, little corrective action has been taken.

b. Fa'a Samoa

Any analysis of the white-collar crime problem in American Samoa must take into consideration the territory's unique

⁹ A striking example of the lack of accountability is the recent refusal by the Fono to allow an audit of its financial records by ASG's Territorial Audit Office after allegations were made that Fono members had abused their travel vouchers and intentionally overspent the budget.

bicultural society.

Each of the seventy-six villages in the territory is comprised of a group of aiga (extended families). The aiga is headed by a matai (chief) who represents the family on the village council. The matai holds title to all assets of the aiga.

The relations among Samoans through their extended families -- part of Fa'a Samoa (the Samoan way of life) -- is a pervasive influence that cannot be underestimated. It is omnipresent in business, politics and almost every other aspect of Samoan society.

Fa'a Samoa affects the criminal justice system in a number of different ways. As revealed during this assessment, conflicts of interest arising from family relations often result in the violation of procurement rules where an ASG official gives preference to a relative in the awarding of a government contract. As also learned during this assessment, the influence of an important family can cause DPS to overlook a crime or stop an investigation in progress. Where investigations do go forward, witnesses may be reluctant to cooperate where a family member, even a distant relative, is involved. In addition, the assessment team heard numerous reports that in prior administrations, matters would be referred to the Attorney General's Office for prosecution and no action would be taken, or if charges were filed, lenient plea agreements were arranged.

The almost limitless reach of the extended family can also make finding an impartial jury a difficult task. Eight of the nine Assistants in the Attorney General's Office are non-Samoan and, thus, not likely to know whether prospective jurors are related through extended families to a defendant or witness in a case. For this reason, the current Attorney General makes an effort to participate in the selection of the jury in every criminal case tried by the non-Samoan Assistants.

An equally important cultural consideration is the Samoan custom of communal ownership. All of the property of an aiga is communally owned by its members. There are some who believe that the traditional Samoan view that property and wealth are communal assets may have fostered a similar view toward government property, particularly among the older generation in power. Many believe that Fa'a Samoa lies at the heart of the ASG's current financial problems.

The ways in which Western values can sometimes clash with Samoan customs is the subject of a book that was recommended to the assessment team by many people in American Samoa as background material for this report. The book was written by an American woman who met a Samoan in the United States, married him

and moved to Samoa. In her book about the differences between Western and Samoan customs, she discusses the Samoan custom of communal ownership, relating a situation where she had accused a relative of her husband of stealing one of her belongings: "Stealing, I learned, was a Western term and was never to be used in connection with a Samoan, particularly Samoan relatives. Property, mine included, belonged to the entire family."¹⁰

There are some Samoans who believe that federal standards of law enforcement should not be applied to the territory. The local newspaper, the Samoa News, recently printed a letter written by Moaali'itele Tu'ufuli, a member of the American Samoa Senate, to the Governor of American Samoa, blasting the Attorney General for "wast[ing] a lot of time and money on questionable investigations and prosecutions." In particular, Senator Tu'ufuli was angered by an investigation into the activities of a company with which the Senator was associated. The Senator's letter closed with the following statement:

Honorable Governor, I ask you to counsel the Attorney General and his staff that this is not the United States of America. Samoa is a small place where our family good name, dignity, and land are most important to a quiet enjoyment of life.¹¹

4. Effects of Government Fraud on ASG Finances

ASG's General Fund deficit has been steadily increasing over the years. As of March 31, 1993, ASG had an estimated adjusted Unreserved Fund deficit of over \$53 million (or an estimated unadjusted Unreserved Fund deficit of over \$22 million).¹² In September 1993, ASG had to borrow over \$10,680,000 from FEMA in

¹⁰ Calkins, Fay G., My Samoan Chief (1962), at 44.

¹¹ Samoa News, Nov. 1, 1994, at 12.

¹² Office of the Inspector General, Dep't. of the Interior, "Audit Report of Estimated Financial Condition, American Samoa Government" (June 1994).

Among the estimated adjustments that DOI-OIG auditors believe should be made to the Unreserved Fund balance of ASG's General Fund include \$9.9 million in excess federal grant drawdowns, \$5.2 million in FEMA bills of collection and unresolved questioned costs, \$4.6 million in other federal grantor unresolved questioned costs, and \$5 million in income tax refunds.

As of June 1994, the ASG Treasury Department had not completed the September 30, 1992 or the March 31, 1993 General Fund trial balance.

order to repay some of its debts. While it is not known how much of the deficit is due to fraud and abuse, there is no question that government fraud of the kind cited in this report has contributed significantly to the territory's worsening financial condition.

In May 1994, Governor Lutali testified before the Subcommittee on Interior and Related Agencies of the U.S. Senate Appropriations Committee regarding the American Samoa budget for fiscal year 1995. He spoke of ASG's inability to assess their financial situation because of an inherently malfunctioning computer system, the increasing deficit, and alleged abuse and mismanagement of government funds which he envisioned would be investigated and prosecuted by DOJ personnel. Despite these problems, the Governor anticipated new federal grants, beyond DOI's operations grant of \$23,090,000 and millions of dollars in other federal grants, including a \$2.4 million food stamp program funded by the U.S. Department of Agriculture and \$5.5 million from DOI capital improvement projects. American Samoa is seeking an additional \$3 million in seed money from the U.S. Congress for a sports complex (ASG has offered to host the 1997 South Pacific Mini-Games).

D. Assessment of the Adequacy of the Current System in Addressing the Existing White-Collar Crime Problem

The number of allegations of fraud by officials within almost every ASG Department is grounds for serious concern. Many of the incidents revealed to the assessment team were well known by the local residents, yet had never been addressed by law enforcement. As a result, many American Samoans seem to have lost faith in the ability of their local government to remedy the existing white-collar crime problem.

The assessment team concluded that while there are a variety of contributing factors for the failure of the current system in American Samoa to adequately address the white-collar crime problem, the following deserve to be highlighted:

1. Fundamental Problems at the Department of Public Safety

First, there are fundamental, internal problems at DPS, discussed above, which affect its overall law enforcement capabilities, e.g., disorganization within its ranks, inadequate compensation of officers, poor facilities, lack of a communications system, problems with unauthorized use of databases, etc. These basic problems, coupled with a lack of training and experience of DPS officers in handling complicated financial or government fraud investigations, severely limit the ability of DPS to address the white-collar crime problem in American Samoa.

2. Lack of Subpoena Authority

Second, American Samoan law does not provide law enforcement with any authority to issue subpoenas prior to the filing of formal charges. Currently, the only method available to local investigators of obtaining evidence from individuals unwilling to cooperate is through the execution of a search warrant. The absence of authority under local law to compel the production of testimonial and/or documentary evidence is a severe handicap to law enforcement attempting to investigate complicated white-collar crime cases.

From a practical standpoint, federal subpoenas and other investigative processes of federal law enforcement agencies have little enforceability in the absence of a federal court in American Samoa.

3. Absence of Certain Criminal Statutes in American Samoan Law

Third, the American Samoa Code Annotated (A.S.C.A.) lacks criminal statutes in several important areas. While it was not feasible for the assessment team to perform an exhaustive analysis of the A.S.C.A., it is noted that the Code does not contain a general fraud statute, a computer fraud statute, or a statute prohibiting bank fraud against a financial institution other than Development Bank of American Samoa.¹³

In the area of government fraud, the offense of making a false statement to a government official is classified only as a misdemeanor. A.S.C.A. Section 46.4607 makes it a class B misdemeanor (punishable by up to six months imprisonment) for a person to make a materially false declaration for the purpose of misleading a public servant in the performance of his/her duty. The statute also provides an affirmative defense to the crime if the declarant retracted the false statement, unless the retraction was made after the falsity of the statement was exposed, or the public servant took substantial action in reliance on the statement. Apart from the fact that the crime is only a misdemeanor, the standards of proof are rather exacting. Under A.S.C.A. Section 46.4608, persons may not be convicted of this crime absent proof of the falsity of the statement by (1) the direct evidence of two witnesses; (2) the direct evidence of one witness together with strongly corroborating circumstances; (3) demonstrative evidence which conclusively proves the falsity

¹³ A.S.C.A. Section 28.0111 makes it a felony for any director, officer, employee, or agent of the Development Bank of American Samoa to embezzle, steal or misapply money of the bank; make any false entry in a book, report or record; or perform any other fraudulent act.

of the statement; or (4) a directly contradictory statement by the defendant under oath together with (a) direct evidence of one witness or (b) strongly corroborating circumstances or (c) a judicial admission by the defendant that he made the statement knowing it was false.

Pursuant to A.S.C.A. Section 12.0219(a), violations of the procurement laws are also class B misdemeanors. The only exception is Section 12.0219(b), which makes it a class C felony (punishable by imprisonment up to seven years) for any person to give or receive anything of value for the purpose of securing or influencing the award of a procurement contract.

Most of the white-collar crime prosecutions in American Samoa are charged under the stealing and embezzlement statutes, both of which are class C felonies.

4. Absence of a U.S. District Court to Enforce Federal Law

Fourth, American Samoa is the only territory of the United States that is not included in the jurisdiction of a federal district court. While the federal crimes set forth in Part I of Title 18 apply in most instances to American Samoa (18 U.S.C. Section 5), there is no district court with jurisdiction over federal crimes generally in American Samoa and no enforcement apparatus.¹⁴

Typically, except as provided by statute, venue for a criminal prosecution is in the district where the offense was committed. Fed. R. Crim. P. 18. See also, U.S. Constitution, Article III, Section 2, cl. 3. Pursuant to this constitutional authority, Congress enacted 18 U.S.C. Section 3238 which provides:

The trial of all offenses begun or committed . . . out of the jurisdiction of any particular State or district, shall be the district in which the offender, or any one of two or more joint offenders, is arrested or is first brought; but if such offender or offenders are not so arrested or brought into any district, an indictment or information may be filed in the district of the last known residence of the offender or of any one of two or more joint offenders, or if no such

¹⁴ In particular instances, Congress has vested in the United States District Court for the District of Hawaii jurisdiction of certain cases arising in American Samoa, such as actions arising under provisions of the Clean Water Act, the Marine Protection, Research, and Sanctuaries Act, and the Intervention on the High Seas Act.

residence is known the indictment of information may be filed in the District of Columbia.

The problems with relying on Section 3238 to prosecute an American Samoan in Hawaii, assuming Hawaii were the place to which he/she was "first brought," were identified by the Criminal Division of the Justice Department as follows:

"First, Title 18 United States Code extends to American Samoa (18 U.S.C. Section 5), but American Samoa is not within the jurisdiction of any district court. Second, 18 U.S.C. Section 3238, which relates to the venue for offenses committed outside the jurisdiction of a State or district is of limited utility, because it may require indictment, and possibly trial, in the District of Columbia. Third, 18 U.S.C. Section 3041, which relates to the issuance of arrest warrants and the removal of prisoners to federal courts that have cognizance over the offense, by federal judges, or magistrates, or by certain state officials does not apply to judges or officers on American Samoa. The Criminal Division therefore recommend[s] [the enactment of new legislation so] that the venue for federal crimes committed on American Samoa be laid in the U.S. District Court for the District of Hawaii, and that the United States Attorney for the District of Hawaii be clearly authorized to prosecute such offenses. In addition, the judges on American Samoa appointed by the Secretary of the Interior should be authorized to issue arrest and search warrants and to order the transfer or removal of prisoners to the District of Hawaii. This could be done by an amendment of 18 U.S.C. Section 3041 or by a special provision applicable to American Samoa that would be codified in Title 48."¹⁵

The absence of a federal court in American Samoa, or a convenient federal court with jurisdiction over cases arising in the territory, has caused the federal departments and agencies responsible for enforcing the federal laws applicable to American Samoa to try to initiate proceedings through the Attorney General's Office under American Samoan law. Generally, this has not proven effective or satisfactory. Indeed, during the eighteen months (1985-87) that the DOI Inspector General's field office was open in American Samoa, the OIG Special Agent was unable to get the Attorney General's Office to prosecute anyone with political "connections."

¹⁵ Letter from the Office of Legal Counsel, U.S. Dep't. of Justice to U.S. Dep't. of the Interior (Dec. 23, 1987).

5. Law Enforcement's Need for Greater Independence

The final factor is the most difficult to identify and, thus, the most difficult to confront. It deals with the inappropriate degree of influence in the American Samoa criminal justice system through extended family relations and politics. A number of different circumstances contribute to the frequency with which such conflicts of interest arise, including the small size and insular nature of the territory, the seemingly limitless reach of the extended family in Samoan culture, and the relative infancy of a local government still attempting to develop internal checks and balances. Any plan to control white-collar crime in American Samoa must include ways to handle potential conflicts of interest arising from personal, financial and political connections.

As appointees of the Governor, both the DPS Commissioner and the Attorney General are potentially subject to political influence in carrying out their respective law enforcement responsibilities. Although apparently not a problem in the current administration, the assessment team was apprised of numerous instances in the past where political pressure was used to stop criminal investigations. To ensure that police and prosecutors are insulated from political influence, it is imperative that they have sufficient independence.

Local law currently provides that in cases where an investigation or prosecution by the Attorney General may result in a personal, financial or political conflict of interest, the Attorney General can petition the Governor to appoint independent counsel. As stated above, however, the Governor has only once utilized this provision, and in that case, no prosecution resulted from the independent counsel's findings that there was sufficient evidence of a crime.

There has been much discussion in American Samoa about changing the office of Attorney General from an appointed to an elected position. Opponents to this idea, however, argue that an elected Attorney General would simply become beholden to the powerful families in the territory. With only 10,000 American Samoans generally voting in an election year, the race for Attorney General could be determined by as few as 200 votes, the equivalent of a voting block of one extended family.

Another possible solution is the appointment of a special prosecutor to investigate and prosecute crimes under Samoan law. A successful model for this type of appointment can be found in the Republic of Palau. The Special Prosecutor in Palau is appointed for a term of five years by the President of Palau and confirmed by the Senate. He/she must be licensed to practice before all courts in the Republic of Palau and any other recognized jurisdiction. The Special Prosecutor cannot be

removed except for cause and without the President first consulting the President of the Senate and the Speaker of the House of Delegates and receiving their concurrence. The duties of the Special Prosecutor include investigation and prosecution of violations of the laws of the Republic of Palau and any of its sixteen states.¹⁶

In American Samoa, it would appear that the Governor alone, and not DOI, has the authority to appoint a special prosecutor to prosecute crimes under Samoan law. In 1983, Congress enacted legislation (48 U.S.C. Section 1662a) providing that amendments or modifications to the American Samoa Constitution may be made only by acts of Congress. The congressional debate on the legislation indicated concern about DOI making unilateral modifications of the American Samoa Constitution. Under the American Samoa Constitution, the Governor is generally authorized to make executive appointments. To the extent that an appointment of a special prosecutor by DOI could be construed as conflicting with or modifying the Governor's appointment authority, the appointment would be a modification of the American Samoa Constitution and thus a violation of 48 U.S.C. Section 1662a.

The appointment by DOI of a special prosecutor to handle violations of federal law applicable to American Samoa, on the other hand, would not violate the American Samoa Constitution.

E. Assessment of the Training Needs of American Samoa Law Enforcement and Prosecution Personnel

1. DPS Officers/Investigators

DPS currently lacks even basic training. Before its officers can be expected to engage in complicated white-collar crime investigations, they must receive basic training in areas such as (a) the laws governing search and seizure, arrest, detention, and civil rights; (b) interview and interrogation techniques; (c) defensive tactics; (d) report writing; (e) testifying in court; and (f) forensic science techniques.

Any subsequent training in the area of government fraud investigations should include instruction on how to use ASG's computer system, the Financial Information Management System (FMIS). With proper instruction, officers can use FMIS to trace the flow of money through drawdowns, invoices and other documents relating to certain grants (where the money has not been commingled). Although FMIS has been undependable in the past in producing reliable financial statements, it can provide at least

¹⁶ Telephone interview with William T. Whisenhunt, Special Prosecutor for the Republic of Palau (Dec. 1994).

some kind of a paper trail to help investigators determine whether there has been any fraudulent use of government funds.

2. Prosecutors

There is currently a wide disparity in the experience level of the lawyers in the Attorney General's Office (ranging from four to twenty years). There is no in-house training program of any kind. The Office budget includes funds for each Assistant to attend one off-island conference per year.

The less experienced attorneys would greatly benefit from an on-going training program in trial skills and strategies, rules of evidence, witness preparation, use of summary charts and other types of graphic evidence, etc.



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 30, 1996

The Honorable Elton Gallegly
Chairman
Subcommittee on Native American
and Insular Affairs
Committee on Resources
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to the questions posed in your letter of September 13, 1995, following up on the Subcommittee's hearing of August 3, 1995, concerning white collar crime in American Samoa. The questions, and our responses thereto, follow.

Question: You indicated in your prepared statement that audits indicated that competitive bidding practices may have been ignored and circumvented and may have resulted in conflicts of interest and abuse of governmental funds by government officials. How could these problems be limited if American Samoa followed the federal procurement procedures prescribed by the U.S. Code of Federal Regulations?

Answer: Imposing federal procurement procedures on the American Samoa Government is not likely to avoid or limit conflict of interest problems or the abuse of federal funds. Federal grant policy provides that state and local governments (including territories) follow their own rules and procedures rather than those of the federal government. American Samoa appears to have adequate procurement rules. The key lies in ensuring compliance with those rules.

Question: How could adhering to federal financial accounting standards and practices deter fraud and abuse?

Answer: In our view, it would certainly be advisable for the American Samoa Government to comply with generally accepted accounting standards. Adherence to such standards might assist in deterring fraud and abuse by improving accountability, so that fraud and abuse could be more easily detected. In addition, the

effort required to meet rigorous accounting standards would help raise the consciousness of government officials to the importance of sound financial management practices. However, a more effective deterrent to fraud and abuse would be a strong law enforcement presence and vigorous prosecution of those who violate federal and territorial laws. With respect to which standards the American Samoa Government should adopt, we would recommend the state and local government standards developed by the Government Accounting Standards Board.

Question: Have you provided assistance to American Samoa to develop legislation to address gaps in American Samoa criminal law?

Answer: We have not provided such assistance to date. As noted in the testimony of Deputy Assistant Attorney General Richard before the Subcommittee on August 3, 1995, however, the Department of Justice is working with the Department of the Interior to develop an appropriate solution to crime problems in American Samoa. Such a solution could include the extension of limited federal court jurisdiction from the District of Hawaii to American Samoa.

Question: What are the projected federal costs of the various options to extend federal district court jurisdiction to American Samoa? If these figures are not available, would you submit preliminary estimates for the record.

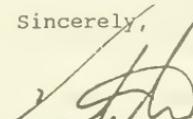
Answer: We estimate that the costs for the United States Attorneys in extending jurisdiction to American Samoa would be about \$575,000 per year. This estimate -- which is very rough and subject to change -- assumes an office staffed in American Samoa, consisting of two Assistant United States Attorneys, one paralegal, and two support staff members. It also assumes \$25,000 in security-related expenses. Preliminary estimates of costs that would be incurred by the U.S. Marshals Service range from approximately \$300,000 to \$360,000. These estimates assume that court would be held in American Samoa (and not, for example, in Hawaii). We note that these estimates relate solely to costs likely to be incurred by this Department (other than the FBI, which is discussed in the next question) and do not include any construction costs (e.g., for a courthouse and/or holding cells). We further note that the Courts would also incur expenses if jurisdiction is extended to American Samoa. In this connection, you may wish to contact the Administrative Office of the United States Courts.

Question: What are the projected costs of a Federal Bureau of Investigation office in American Samoa?

Answer: We estimate the cost of a temporary (*i.e.*, 1 year, as described in Mr. Richard's testimony of August 3, 1995) assignment of an FBI agent to American Samoa to be approximately \$150,000. This estimate is based on the 2-year assignment of an FBI agent to the Northern Mariana Islands (also a joint effort with the Department of the Interior), which was funded for \$300,000. This is a rough estimate, inasmuch as no office space has been identified at this time. As noted in Mr. Richard's testimony, funding for this interim assistance is to be provided by the Department of the Interior, subject to the availability of appropriations.

We trust that these answers are responsive to your questions. Please feel free to call upon us if we may be of additional assistance in connection with this or any other matter.

Sincerely,



Andrew Fois *a.f.*
Assistant Attorney General

cc: Honorable Eni F.H. Faleomavaega
Ranking Minority Member



OFFICE OF THE GOVERNOR
American Samoa Government
Pago Pago, American Samoa 96799

A.P. Lutali, Governor
Teuase P. Sunea, Lt. Governor

February 9, 1996

Telephone: (684) 633-4118
Fax: (684) 633-2262

Serial: 131

Honorable Elton Gallegly,
Chairman, Subcommittee on Native American
and Insular Affairs
Committee on Resources
1522 Longworth House Office Building
Washington, D.C. 20215

Dear Chairman Gallegly:

I apologize for the delay in responding to the questions which you forwarded to me in September, 1995 following the Subcommittee's hearing on White Collar Crime in American Samoa. I am enclosing answers to your questions together with some pertinent statutory material. I appreciate the cooperation of the Subcommittee staff in keeping the hearing record open for this response.

Since the hearing on White Collar Crime, I have sent letters on this subject to Attorney General Janet Reno and Secretary of the Interior Bruce Babbitt. Copies of those letters are enclosed for inclusion in the hearing record.

Sincerely,

G P Lutali
A.P. LUTALI
Governor

Enclosures:

cc: Delegate Eni F.H. Faleomavaega (w/enclosures)

Subcommittee on Native American and Insular Affairs
Hearing on American Samoa White Collar Crime
August 3, 1995

Answers to Questions Submitted to Governor A.P. Lutali

1. Q: H.R. 13332 also requires American Samoa to establish under local law independently audited, semi-autonomous agencies for certain areas of public utilities infrastructure, in order to expend federal funds for related areas of capital improvement projects. What efforts have you made to establish semi-autonomous agencies in American Samoa?

A: Our Legislature has established the American Samoa Community College (ASCC) as an autonomous institution and the American Samoa Power Authority (ASPA) as a semi-autonomous agency. Copies of the statutory charters for ASCC and ASPA are enclosed. I have submitted, and the Legislature is currently considering, a bill which would establish the American Samoa Medical Authority (ASMCA) as a semi-autonomous agency. A copy of the proposed legislation is enclosed.

2. Q: What are you doing to ensure that federal bidding procedures are being followed for capital improvement projects in American Samoa?

A: Our local procurement laws include provisions which require competitive bidding. In addition, federal construction grants typically contain conditions and stipulations regarding the qualification and selection of contractors. The Attorney General and the Chief Procurement Officer are working closely with the CIP Committee to make sure that all contract awards comply with applicable federal and local statutes.

3. Q: Do you concur that the potential for conflicts of interest and abuse can be minimized by following the procurement procedures in the code of federal regulations?

A: We believe that the potential for conflict of interest and abuse is minimized by following local procurement rules, which are similar to federal procurement regulations, and by following the federal procurement requirements which are specified in federal grant programs.

4. Q: Your statement emphasizes the complexity of establishing federal criminal jurisdiction in American Samoa and suggest field hearing be held in American Samoa. Why do you believe Congressional field hearing are necessary given the extent of testimony being presented today?

Subcommittee on Native American and Insular Affairs
Hearing on American Samoa White Collar Crime
August 3, 1995

Answers to Questions Submitted to Governor A.P. Lutali, page two

- A: Field hearings are necessary in order for the Subcommittee to understand local conditions and to learn the views of the people and leaders of American Samoa. Because of the distance and expense involved, it is not reasonable to expect representatives of our affected institutions and organizations to appear at hearings held in Washington, D.C.. The question of federal court jurisdiction in American Samoa has been studied and debated for decades by attorneys, judges, scholars and public officials, and the range of sensitive issues and concerns cannot possibly be covered in a single half-day hearing.
5. Q: How will American Samoa address the significant gaps in American Samoa criminal law identified in the Department of Justice Report?
- A: At my direction, our Attorney General is working with the local legislature to revise and upgrade the criminal code in American Samoa and to cure the deficiencies identified by the Justice Department.



AMERICAN SAMOA GOVERNMENT
PAGO PAGO, AMERICAN SAMOA 96799

In reply refer to:

LEGISLATURE OF AMERICAN SAMOA

C E R T I F I C A T I O N

Senate Chamber
October 1, 1992

I certify that Senate Bill No. 22-109 passed third reading on this date in the Senate during its Sixth Special Session of the Twenty-second Legislature of American Samoa.

Leo'o V. Ma'o
Leo'o V. Ma'o
SECRETARY OF THE SENATE

House Chamber
October 8, 1992

I certify that Senate Bill No. 22-109 passed third reading on this date in the House of Representatives during its Sixth Special Session of the Twenty-second Legislature of American Samoa.

Wally P. Utu
Wally P. Utu
CHIEF CLERK, HOUSE OF REPRESENTATIVES

THE TWENTY-SECOND LEGISLATURE OF AMERICAN SAMOA

Sixth Special Session

De~~gun~~ and held at Fagatogo, Tutuila, American Samoa
on Monday, the twenty-eighth day of September
one thousand nine hundred and ninety two

AN ACT ESTABLISHING AN INSTITUTION OF HIGHER LEARNING KNOWN AS THE AMERICAN SAMOA COMMUNITY COLLEGE WITHIN THE EXECUTIVE BRANCH OF THE GOVERNMENT; AND CREATING CHAPTER 20 UNDER TITLE 16 ASCA.

BE IT ENACTED BY THE LEGISLATURE OF AMERICAN SAMOA:

Section 1. There is created a new chapter 20 under Title 16 which reads:

"Chapter 20

AMERICAN SAMOA COMMUNITY COLLEGE

Sections:

- 16.2001 Establishment of American Samoa community college.
- 16.2002 Powers and duties of the college.
- 16.2003 Establishment of the board of higher education.
- 16.2004 Board of higher education, powers and duties.
- 16.2005 President of the college.
- 16.2006 Personnel.
- 16.2007 Assumption of Role.
- 16.2008 Budget.
- 16.2009 Fiscal Management.
- 16.2010 Independent Audit Reports, Consultants, Annual Reports.
- 16.2011 American Samoa community college land grant endowment fund.

16.2001 Establishment of the American Samoa community college.

There is established an institution of higher learning known as the American Samoa community college within the executive branch of the government.

16.2002 Powers and duties of the college.

The American Samoa community college:

- (1) may sue and be sued;
- (2) may adopt and use a seal;
- (3) may make contracts, as authorized in this chapter;
- (4) may adopt, amend and repeal bylaws;
- (5) may purchase or lease and hold personal property it considers necessary or convenient in the transaction of its business, may dispose of personal property held by it;
- (6) has the power in the name of the government to purchase, lease, or sell real estate, and accept title to that real estate in the name of the government; to accomplish the purposes of this chapter;

(7) may procure or contract for the procurement of supplies, equipment, materials, personal services other than by employees, and construction with any public or private entity upon terms and conditions as it finds necessary to the full and convenient exercise of its purposes and powers, subject to all applicable laws and rules of American Samoa; and shall receive and account for its inventory of materials;

(8) shall develop a program of education to meet the current and future needs of American Samoa, which shall be accredited under appropriate procedures existing in the United States for higher education;

(9) shall develop and establish a Samoan and Pacific Studies Program to promote interest in, and awareness of the culture, including language, and affairs of American Samoa and other islands of the Pacific; the Samoan and Pacific Studies Program shall include, but not limited to programs for the development of cultural, educational, training, and research programs for the people of Polynesia and other islands of the Pacific.

(10) shall develop and establish an Adult Education and Literacy Program for American Samoa;

(11) shall develop and establish a program in response to Federal laws relating to the Land Grant Program;

(12) shall fix schedules of tuition rates and fees for educational service and shall establish rules and procedures, in accordance with 4.1001 et seq. for the provision of such services;

(13) may accept on behalf of the government from any other government or governmental agency, or from any other public or private body, or from any other source, grants, contributions of money or property which the college may use for or in aid of any of its purposes;

(14) adopt other rules pursuant to 4.1001 et seq., not inconsistent with the provisions of this chapter or with the rules of government, that are necessary and proper for the administration and operation of the college;

(15) exercise all other powers, not inconsistent with the provisions of this chapter or with the rules of the government, which may be reasonably necessary or incidental to the establishment, maintenance, and operation of an institution of higher learning.

16.2003 Establishment of - board of higher education.

(a) The board of higher education is established. The board shall consist of the director of education and 7 members, 6 of whom are appointed by the Governor with the advice and consent of the Legislature. The board members shall serve without compensation or other emoluments.

(b) In order to provide continuity in the work of the board, the term of office of 6 of the Board members shall be for 4 years and shall be so arranged as not to expire at the same time. Members shall serve until their successors have been qualified. Vacancies shall be filled in the same manner as original appointments.

(c) The 7th member of the board is a 2nd year student of the college elected at a schoolwide election during the first week of school. This member serves a one-year term and may be reelected. Vacancies are filled by an election held within 1 week of the knowledge of a vacancy.

16.2004 Board of higher education - Powers and duties.

The Board of higher education, in addition to other provisions of this chapter:

- (1) shall serve in a supervisory capacity and as such, shall function to supervise the implementation of the powers and duties of the college;
- (2) shall select its chairman and other officers from among its own membership;
- (3) may change the name of the college, with approval of the Legislature;
- (4) shall review and approve the educational program of the college;
- (5) shall grant diplomas, certificates, degrees or other honors; and
- (6) shall adopt the seal of the college.

16.2005 President of the college.

The board of higher education shall recommend to the Governor a list of three candidates, in the order of descending priority, who have received the highest consideration of the board. The Governor shall appoint the president of the college only from the proffered list of recommendations. Subject to government employee laws 7.0101 et. seq. and rules and procedures of the college, the President serves at the pleasure of the Board.

16.2006 Personnel.

All officers and employees of the college, except the president, are appointed or hired and compensated in accordance with the requirements of the government employee laws 7.0101 et. esq., except that the college may adopt administrative rules, pursuant to 4.1001 et seq. to supplant government employee laws and rules in the specific categories of personnel recruitment, assignment, transfer, employment, termination of employee services, disciplinary actions, and compensation at levels comparable to higher education management and employee levels.

16.2007 Assumption of role.

The college shall assume, upon approval of this Act, full responsibility and right to operate all items of property, including any construction in progress, equipment, and machinery used under the previous status of operation by the college. All property jointly used by the college and government, except the infirmary located on campus, are hereby transferred to the college. Future capital contributions to the college from the government must be by separate authorization and appropriation. The Legislature has the exclusive power to provide supplemental funding for the operations of the college.

16.2008 Budget.

(a) The basic source of financing the college is the government through its regular budget process. The government shall provide a minimum appropriation from local revenues for the operation and programs of the college based on the actual cost of \$2820 per full time equivalent student, as has been determined by current, actual fall and projected spring and summer class schedules, with an annual inflationary adjustment of 4.8 percent.

(b) At the appropriate time the college shall submit to the Governor, upon approval of the board, a budget of estimated expenditures for the next fiscal and academic years. The budget shall contain separate estimates for capital outlay expenses and operational expenses and shall be submitted in such form and detail as may be required by applicable laws and rules of the government.

(c) Each budget shall identify clearly the amount or amounts requested to be appropriated, the amount or amounts available or estimated to be available from gifts, grants, donations, or other sources, and the amount or amounts for which application is being made or is to be made for federal aid.

16.2009 Fiscal Management

Further to 16.1001 and 16.1004, the college is responsible for the management and operation of its fiscal affairs. It shall establish procedures based on principles of sound bookkeeping and fiscal management with the approval of the board, for the administration of all accounting systems, including but not limited to general ledger, fixed assets, accounts receivable, accounts payable, payroll, and cash. The college shall submit quarterly performance reports to the office of program planning and budget as required by 10.0509.

16.2010 Independent audit reports - consultants - Annual Reports.

(a) The college shall employ a firm of independent certified public accountants to examine and report each year upon the status of financial records and accounts, and may renew that employment annually. Copies of these reports shall be furnished by the college to the Governor and the Legislature.

(b) The college may make intergovernmental or contractual agreements for expert consultants to advise or consult with it in all matters related to the operation of the college, including tuition fees, systems design, plant design, planning, budgeting, and legal matters.

(c) The college shall provide an annual report for each fiscal year, which shall

include descriptions of financial and programmatic activities of the college during the year, to the Governor and the Legislature not later than 31 December.

16.2011 American Samoa community college land grant endowment fund.

(a) For the purpose of compliance with federal laws designating the American Samoa community college as a land grant college established for the benefit of agriculture and mechanical arts, there is established the American Samoa community college land grant endowment fund. The fund shall be maintained separate and apart from any other funds of the government. Use of the fund shall be administered and controlled by the board of higher education. Independent records and accounts shall be maintained in connection with the fund by the Treasurer of American Samoa. An annual fiscal year financial statement of the fund shall be submitted by the board of higher education and the treasurer to the Governor and Legislature no later than 15 December 1987.

(b) The \$3,000,000 received from the United States government in support of the college as a land grant college is hereby credited to the fund. The board of higher education and government shall comply with all conditions pertaining to the fund and the income therefrom as set forth in federal laws, including but not limited to the requirement that the principal sum shall remain forever undiminished.

(c) All income from investment of the principal sum shall be credited to the account of the fund, and shall be appropriated by the Legislature in the annual fiscal year appropriations act solely for the operation of the land grant programs of the college. Appropriations of income shall be made only after the board of higher education has submitted to the Legislature recommendations on the use of the income. The Legislature may authorize reinvestment of the income to accumulate sufficient funds for specific purposes, related to land grant operations.

(d) The board of higher education has full power and authority, subject to approval of the Legislature, to direct the investment and reinvestment of the fund without distinction between principal and income as it considers desirable; as long as the investment income is available for appropriation in accordance with subsection (c) in property as defined in subsection (e) provided that the investment shall yield a fair and reasonable annual rate of return, which is fixed at no less than 5 percentum per annum of the amount invested. The board may invest and reinvest the fund in property in which a prudent man familiar with those matters and using care, skill, prudence, and diligence would invest in the conduct of an enterprise of like character and with like aims, insuring that the investments of the fund are diversified so as to minimize the risk of large losses unless to do so would clearly not be prudent. The power to manage investments includes, but is not limited to, the power to hold, purchase, sell, convey, assign, transfer, dispose of, lease, subdivide, or partition any assets held or proceeds thereof, to execute or cause to be executed relevant documents; to enter into protective agreements, executives proxies, and grant consent; and to do all other things necessary or appropriate to its position as an owner or creditor. Transactions in marketable securities must be carried out at prevailing market prices.

(e) Except as otherwise provided herein, the word "property" means real property, United States government securities and agency issues, state and municipal bonds, corporate bonds, real estate mortgages, common and preferred stock, mutual funds, convertibles, real

estate investment trusts, and other securities selected by the board with the care of a prudent man. The word "property" excludes lands for sites or experimental farms of the college, and buildings including the purchase, erection, and preservation or repair thereof, except as permitted by federal laws."

Sec 2. Repealer.

"Existing Chapter 20 of Title 16 is repealed."

Lefutu Toloa
Lefutu Toloa
PRESIDENT OF THE SENATE

Tuana'itau F. Tuia
Tuana'itau F. Tuia
SPEAKER OF THE HOUSE

Hereby Approved this 12th day of November, 1992

Peter J. Coleman
Peter J. Coleman
Governor of American Samoa

A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE THE AMERICAN SAMOA MEDICAL CENTER AUTHORITY AS AN AGENCY OF THE EXECUTIVE BRANCH OF THE AMERICAN SAMOA GOVERNMENT, TO REPEAL TITLE 13, CHAPTERS 1 AND 2 ASCA, TO CREATE A NEW TITLE 13, CHAPTER 01 AND TO AMEND TITLE 13 CHAPTER 06, ASCA."

BE IT ENACTED BY THE LEGISLATURE OF AMERICAN SAMOA:

Section 1.

Title 13, Chapter 01, Sections 0101 through 0132 (entitled "Health Care Planning") are repealed in their entirety.

Section 2.

Title 13, Chapter 02, Sections 0201.1 through 0205.1 (entitled "Health Facility Certification") are repealed in their entirety.

Section 3.

There is created a new Chapter 01 under Title 13 which reads:

Chapter 01

AMERICAN SAMOA MEDICAL CENTER AUTHORITY ACT

Sections:

- 13.0101 Establishment of the American Samoa Medical Center Authority
- 13.0102 Powers and Duties of the Medical Center Authority
- 13.0103 Board of Directors of the Medical Center Authority
- 13.0104 Powers and Duties of the Board of Directors
- 13.0105 Transfer of the existing Hospital Resources and Maintenance

of Provision for Health Services

- 13.0106 Accounting and Financial Management
- 13.0107 Legal Representation
- 13.0108 Severability
- 13.0109 Effective Date

13.0101 Establishment of the American Samoa Medical Center Authority

There is established a governmental agency within the executive branch of the government known as the American Samoa Medical Center Authority ("Medical Center Authority").

13.0102 Powers and Duties of the Medical Center Authority

The Medical Center Authority:

- (1) may sue and be sued as set forth in 43.1201 et seq. ASCA;
- (2) may adopt and use a seal;
- (3) may make contracts, as authorized by this Chapter;
- (4) has the power in the name of the government to purchase, lease and hold, transfer or sell real estate, and to accept title to that real estate in the name of the government, to accomplish the purposes of this Chapter;
- (5) may purchase or lease and hold personal property it considers necessary or convenient in the transaction of its business, and may dispose of personal property held by it;
- (6) shall provide, consistent with available resources, quality medical services as required by statute;
- (7) shall operate, manage and supervise all the facilities of the Medical

Center Authority consistent with the requirements of this Chapter and the laws and rules of the American Samoa government including, but not limited to, the Administrative Procedures Act, Section 4.1001 et seq. ASCA except that the Medical Center Authority has the power to adopt, implement and exercise rules of employment regarding any employees necessary for the provision of professional and medical services by the Medical Center Authority which may be needed to accomplish the purposes of this Chapter;

- (8) except as relates to contracts for the procurement of medical services, supplies, equipment, drugs and materials, the Medical Center Authority shall be subject to the procurement rules of the Procurement Act. With regard to procurement for medical services, supplies, equipment, drugs and materials inherent to its operation, the Medical Center Authority shall adopt, implement and exercise rules regarding all rights, duties and authority relating thereto as is necessary to accomplish the purposes of this Chapter subject to all existing applicable laws and rules. For the purposes of procurement of such goods and services, the Chief Financial Officer, or a designee approved by the Medical Center Authority, shall act as or be of the Chief Procurement Officer. The Medical Center Authority shall account for and inventory all medical services, supplies, equipment, drugs and materials received under this section;
- (9) may enter into agreements and obtain, receive, manage and expend all private and public grant funds, in the name of the American Samoa government, which may be available for the purpose of transacting its business;
- (10) may receive bequests, gifts and donations of all kinds of property in fee simple or trust for charitable or public purposes and perform all acts necessary to carry out the purposes of such bequests, gifts, donations or trusts, with the power to manage, sell, lease or otherwise dispose of same in accordance with the terms of the bequest, gift, donation or trust;
- (11) shall prepare an annual budget sufficient to support its operations

and planned improvements, and to provide basic health care services of acceptable quality and scope and shall submit its annual budget to the Governor for transmittal to the Legislature as part of the Governor's annual budget.

- (13) shall coordinate with the Department of Health on activities directed toward health promotion and illness prevention;
- (14) may do other things needful and necessary to the full and convenient exercise of the above powers and duties.

13.0103 Board of Directors of the Medical Center Authority

- (1) The Medical Center Authority is governed by a Board of five (5) Directors appointed by the Governor and confirmed by the Senate. At least two (2) of the Directors shall be experienced in financial and business management matters; at least one (1) member shall be an active or retired health care professional; at least one (1) member shall have experience in health or public administration; and, there shall be one (1) member appointed at large. No more than one (1) director may have his or her primary residence outside of American Samoa. No director may be appointed to serve while employed at the same time by any facility owned, in trust or otherwise, or operated by the Medical Center Authority. No director may be removed from office by the Governor without cause as provided for in the Administrative Procedures Act, Section 4.101 et seq. ASCA.
- (2) At least two (2) Directors appointed to the initial Medical Center Authority Board of Directors shall have a minimum of two (2) prior years experience as a member of a hospital Board of Directors.
- (3) The Chief Executive Officer and the Medical Director shall serve as ex officio members of the Board without a vote in any matters.
- (4) Upon the effective date of this Chapter, the Governor shall establish staggered terms by appointing five Directors for terms of one (1), two (2), three (3), four (4), and five (5) years respectively. All

subsequent appointments shall be for four (4) year terms, or for the unexpired portion of a term. Recess appointments may be made to fill vacancies caused by death, resignation, or removal for cause if the vacancy occurs while the Senate is not in session. Recess appointments expire at the conclusion of the next following regular or special session of the Senate if they are not confirmed during that session. Incumbent members may continue to serve after the expiration of a term until a successor is appointed and confirmed. Currently incumbent Directors acting under Executive Order No. 17-1993 may continue to serve as appropriate under subsection (a) above.

- (5) The Board of Directors shall meet at least four (4) times per year. A quorum shall consist of three (3) Directors.
- (6) Board members shall be compensated at the rate of five thousand dollars (\$5,000.00) per year, except the chairperson who is to receive six thousand dollars (\$6,000.00) per year. The non-resident director shall also receive expenses for necessary travel, lodging, meals and telecommunication in the performance of his or her duties.

13.0104 Powers and Duties of the Board of Directors

All powers and duties vested in the Medical Center Authority shall be exercised by the Board of Directors. In carrying out its functions, the Board shall also:

- (1) elect officers at its first meeting, including a chairperson, vice-chairperson, and others as the Board deems advisable. Thereafter, the Board shall elect officers annually at the first meeting of each fiscal year;
- (2) appoint and remove, supervise and prescribe the duties and compensation of the Chief Executive Officer, the Chief Financial Officer and the Medical Director as appropriate and who shall perform all the duties assigned to them subject to all applicable

laws and rules, the bylaws of the Medical Center Authority, and the directions of the Board;

- (3) adopt, amend and repeal bylaws;
- (4) develop, implement and exercise policies, programs and rules for the administration, management and operation of the Medical Center Authority as is necessary to the implementation of the purpose of this Chapter;
- (5) provide for an accurate accounting and financial management system, and review the monthly operation statements and such other financial reports as it deems necessary;
- (6) submit reports to the Governor as he directs from time to time;
- (7) exercise all other powers and duties not inconsistent with the laws and rules of American Samoa which are reasonably necessary to the administration, management and operation of the Medical Center Authority and the Board.

13.0105 Transfer of the existing Hospital Resources and Maintenance of Provision for Health Services

- (1) At a date fixed by the Board of Directors, the government shall transfer to the Medical Center Authority the right to use, control, and occupy all property and facilities then in use by the existing hospital. Any property which is jointly used for the hospital and other government functions shall be equitably allocated between government agencies and the Medical Center Authority. In the event of a dispute, the re-allocation of existing resources shall be determined by the Governor. Upon completing the re-allocation, the Medical Center Authority shall provide the Governor with an inventory summarizing the disposition of all property.
- (2) During the transfer of the property and facilities, all laws and rules relating to the provision of health care services shall continue in

effect until duly changed.

- (3) All America Samoa employees assigned to facilities at the time of transfer shall continue to be employed by the Medical Center Authority subject to any rules of employment applicable to said employees adopted by the Medical Center Authority under this Chapter.

13.0106 Accounting and Financial Management

- (1) The Medical Center Authority shall establish and is responsible for the financial management of its operations and shall administer all of its accounts including, but not limited to, general ledger, fixed assets, accounts receivable, accounts payable, payroll, revenues and cash through the Medical Center Authority revenue fund. The use of the accounts is restricted to transactions authorized by the Medical Center Authority and no funds deposited therein may be withdrawn for any other purpose. A financial audit to be made by a competent certified public accountant shall be conducted at the end of each fiscal year and provided to the Governor and the Legislature.
- (2) All revenues relating to the Medical Center Authority and its purposes including, but not limited to, third-party payments for services, federal funds from whatever source, including Medicaid and Medicare, public and private grants, tax revenues specifically earmarked by law for Medical Center Authority purposes, donations, gifts, Department of the Interior grant-in-aid funds earmarked for health, and funds appropriated by the Legislature for the Medical Center Authority shall be deposited into the appropriate Medical Center Authority accounts. The Treasurer shall deposit one-twelfth of the amount annually appropriated by the Legislature for the Medical Center Authority into the authority's accounts no later than the fifth of each month. Any funds which are appropriated by the Legislature for the Medical Center Authority and which are deposited according to this provision shall be expended upon check or warrant of the Board of the Medical

Center Authority, as other income is so expended.

- (3) The Medical Center Authority shall be responsible for all debts and liabilities incurred in its operation after the date of transference. At the time of transference, the Medical Center Authority shall itemize all existing medical debts and liabilities and submit its list to the Treasurer. All debts and liabilities incurred before the transference shall be paid for by the Treasurer from the general fund appropriations designated for that purpose.

13.0107 Legal Representation

The Attorney General of American Samoa, as the attorney for the American Samoa Government, shall represent the Medical Center Authority with respect to all legal matters. The Medical Center Authority may, at the discretion of the Attorney General, retain the services of a private attorney.

13.0108 Severability

If any section or part of a section of this Chapter is determined to by a court of competent jurisdiction to be invalid, it shall not invalidate or impair the force or effect of any other section or part of a section of this Chapter, except insofar as such other section or part of a section is dependent for its operation upon the section so held to be invalid.

13.0109 Effective Date

The effective date of shall take effect upon approval by the Legislature and the signing by the Governor.

Section 4.

Title 13, Chapter 06, Section 0601 is amended to read:

- (a) Medical attention shall be provided free of charge by the government to the following persons:

- (1) all American Samoans, including those men or women who are foreigners but are married to American Samoans, and their children if they are residing in American Samoa at the time of treatment;
- (2) foreigners who have resided in American Samoa for at least ten (10) years prior to treatment;
- (3) civil service employees of the United States of America assigned to duty in American Samoa and persons who are exempt from payment of medical charges by virtue of contracts with the government and spouses and children of such persons and employees.

(b) Free treatment is limited to persons presenting themselves ~~at clinics, dispensaries, or the hospital~~ to Medical Center Authority facilities and does not include house visits or consultation at other places unless made at the convenience of the physician or medical officer, but nothing contained in this section may be construed as limiting the right of the ~~government~~ Medical Center Authority to make a reasonable charge for the use of ~~government facilities at the hospital and dispensaries~~ Medical Center Authority facilities.

(c) Free treatment shall include drugs and medicines prescribed by the physician or medical officer, but the cost of eyeglasses shall be prepaid by all patients.

(d) Dental treatment shall be rendered in the same manner and under the same conditions as medical treatment.

Section 5.

Title 13, Chapter 06, Section 0602 is amended to read:

(a) Professional and ~~other service and administrative charges shall be made by the director of health (including Samoan medical and dental officers)~~ Medical Center Authority to persons not provided for in ASCA 13.0601, ~~but such charges may be waived by the director~~

(b) A daily charge of an amount to be fixed by the ~~director~~ Medical Center Authority from time to time shall be made for patients admitted to any Medical Center Authority facility, ~~government hospital~~ but such charges may be waived by the director in cases of hardship. An additional charge for private rooms shall also be established. All charges shall be subject to the approval of the Governor and shall be prominently displayed in all hospitals.

(c) All money received as a result of charges made under this section shall be deposited in the Medical Center Authority accounts established under section 13.0106 of this Chapter, ~~the general fund in accordance with accounting procedures established by the Treasurer~~.

Title 15

PUBLIC UTILITIES AND ENERGY

Chapters:

- 01 American Samoa Power Authority
- 02 Notice of Service Termination
- 03 Office of Communications
- 04 (Reserved)
- 05 Emergency Energy Management

Chapter 01

AMERICAN SAMOA POWER AUTHORITY

Sections:

- 15.0101 Establishment of the American Samoa power authority.
- 15.0102 Powers and duties of the authority.
- 15.0103 Board of directors of the authority.
- 15.0104 Board of directors--Powers--Duties.
- 15.0105 Personnel.
- 15.0106 Transfers of existing systems of generation-Transmission and distribution.
- 15.0107 Accounting and budget.
- 15.0108 Independent audit reports--Utility consultants--Annual reports.
- 15.0109 Transition period.
- 15.0110 Implementation.
- 15.0110.1 Notice to customers.
- 15.0111 Penalty fees--Prohibit.

Reviser's Comment:

Section 1 of PL 17-56 created chapter 01 in Title 15. PL 17-56 became effective 10 November 1982 upon approval by the Governor "due to the emergency need to establish, by law, a power authority for the operation of the electric power system in the Territory" (preamble).

- 15.0101 Establishment of the American Samoa power authority.

(a) There is established a governmental agency within the executive branch of the government known as the American Samoa Power Authority; and

(b) a division within the American Samoa power authority known as the water and wastewater utility division.

History: 1982, PL 17-56 § 2; 1991, PL 22-14

Amendments: 1991 Establishes a Division of Water and Wastewater Utility in the American Samoa Power Authority and to allow the Authority to borrow.

15.0102 Powers and duties of the authority.

The American Samoa power authority:

- (1) may sue and be sued as set forth in 43:1203 and 43:1205;
- (2) may adopt and use a seal;
- (3) may make contracts, as authorized in this chapter;
- (4) may adopt, amend, and repeal bylaws;
- (5) may purchase or lease and hold personal property it considers necessary or convenient in the transaction of its business, and may dispose of personal property held by it;
- (6) has the power in the name of the government to purchase, lease, or sell real estate, and to accept title to that real estate in the name of the government, to accomplish the purpose of this chapter;

(7) shall make all arrangements for the generation, purchase, transmission, distribution, and sale or other disposition of electric energy generated by facilities of the authority or purchased by the authority within the Territory;

(8) shall develop and publish tariffs and schedules of rates, charges, and services and other rules for providing electric energy in accordance with the Administrative Procedure Act, 4.1001 et seq.; these rates and charges carry into effect, as near as may be, the standards prescribed for ratemaking in PL 95-617, the Public Utility Regulatory Policies Act, effective 9 November 1978, 16 U.S.C. 2621 et seq.;

(9) shall, through its water and wastewater

utility division, make all arrangements for the production, distribution, and sale of potable water, and the collection and disposal of wastewater, and the operations and maintenance of the water and wastewater systems within the Territory of American Samoa;

(10) shall develop and publish tariffs and schedules of rates, charges, and services and other rules of providing potable water and for wastewater, disposal in accordance with the Administrative Procedure Act, 4.1001 et seq.;

(11) may borrow money and incur indebtedness for capital improvements, and may mortgage, assign, hypothecate and give security interests in authority property and earned revenue to secure such indebtedness; provided that no mortgage of or security interest in real property of the authority or of the government may be given; provided that any indebtedness so created shall be that of the authority alone, and shall not be an obligation or debt of the government, unless otherwise provided by law and provided that total indebtedness shall not exceed 50% of the authority's equity unless approved by the Fono;

(12) may contract for the procurement of supplies, equipment, materials, personal services other than by employees, and construction with any public or private entity upon terms and conditions as it finds necessary to the full and convenient exercise of its purposes and powers, subject to all applicable laws and rules of American Samoa; the authority shall receive and account for its inventory of materials, supplies and equipment; and

(13) may do other things needful and necessary to the full and convenient exercise of the above powers, including but not limited to the construction of facilities on property owned by the government.

History: 1982, PL 17-56 § 3; 1990, PL 21-29; PL 22-14.

Amendments: 1990 Extends government tort liability to the American Samoa Power Authority by amending sections 15.0102 and 43.1202.

15.0103 Board of directors of the au-

thority.

(a) The authority is governed by a board of 5 directors, appointed by the Governor and confirmed by the Legislature. At least 2 of the directors shall be experienced in the management of electric utilities, at least one shall have a financial background, and at least one shall have a legal background. No fewer than 2 directors shall be from outside American Samoa.

(b) The first director appointed is appointed to a term expiring on 30 June 1982. The second director is appointed to a term expiring on 30 June 1983. The third director is appointed to a term expiring on 30 June 1984. The fourth and fifth directors are appointed to terms expiring on 30 June 1985. All subsequent appointments are for 4-year terms, or for the unexpired portion of a term. Recess appointments may be made to fill vacancies caused by death, resignation, or removal for cause if the vacancy occurs while the Legislature is not in session. Recess appointments expire at the conclusion of the next following regular or special session of the Legislature if they are not confirmed during that session. Incumbents may continue to serve after the expiration of a term until a successor is appointed and confirmed. The Governor designates the chairman annually from among the membership of the board of directors, and the board selects its vice-chairman. Currently incumbent directors under the executively ordered authority may be reappointed.

(c) The board of directors shall meet at least 4 times per year. A quorum is 3 directors, at least one of whom is experienced in the management of electric utilities and one of whom is from outside American Samoa.

(d) Compensation is at a rate of \$5,000 per year for directors and \$6,000 per year for the chairman. Travel, lodging and meal expenses will be provided for outside directors.

History: 1982, PL 17-56 § 4.

15.0104 Board of directors--Powers--Duties.

All powers and duties vested in the authority are exercised by the board of directors. In carrying out this function, the board shall also:

(1) elect at its first meeting a vice-chairman, who shall preside at all meetings in the absence of the chairman, and other officers as it may deem desirable from among its members; elect its officers annually thereafter at its first meeting in October;

(2) appoint and prescribe the compensation for the executive director, who is the chief operating officer of the authority and exercises all executive functions, and the business and finance manager, operations manager, and plant managers, who perform duties assigned by the executive director, subject to all applicable laws and rules, the by-laws of the authority, and directions of the board;

(3) adopt, amend and repeal bylaws;

(4) develop policies and programs for the administration, management and operation of the authority;

(5) approve the annual budget of the authority;

(6) review the monthly operating statements of the authority, and such other financial reports as it deems necessary;

(7) submit monthly operating statements to the Governor not later than the twentieth working day after the end of the previous month, and such other financial statements as he directs from time to time;

(8) exercise all other powers not inconsistent with the laws and rules of American Samoa which are reasonably necessary to the administration, management, and operation of the authority and the board.

History: 1952, PL 17-56 § 5.

15.0105 Personnel.

All officers and employees of the authority other than executive director, business and finance manager, operations manager and plant managers are appointed and compensated in accordance with the requirements of the government employee laws, 7.0101 et seq., except the board may

adopt administrative rules, pursuant to 4.1001 ASCA et seq., to supplant government employee laws and rules in the specific categories of personnel recruitment, employment, termination of employee services, disciplinary actions, and compensation at levels comparable to prevailing utility levels.

History: 1952, PL 17-56 § 6

15.0106 Transfers of existing systems of generation--Transmission and distribution.

(a) Electric Utility. At a date fixed by the board of directors, the government shall transfer to the authority the right to operate all items of property, including construction in progress, equipment and machinery used in connection with the then existing electric utility operation of the government. Property jointly used for electric utility and governmental non-utility functions must be equitably allocated between the government and the authority; provided that the allocation assures the continuing efficient functioning of the electrical generations, transmission, and distribution functions of the government. In the event of dispute, the allocation is determined by the Governor. The property accounts for the authority are valued for ratemaking purposes at the depreciated acquisition cost of the property as of the date of transfer, and are included in the rate base of the authority. Future capital contributions in the authority from the government must be by separate authorization and appropriation. The Legislature has the exclusive power to provide supplemental funding by appropriation for the operations of the authority. These appropriations may be designated as loans and not as part of the permanent capital. The appropriations may require repayment to the government at rates of interest specified in the appropriations bills.

(b) Water and wastewater utility. At a date fixed by the Governor and the board of directors of the power authority, the government shall transfer to the authority the right to operate all items of property, including construction in progress.

equipment and machinery used in connection with the then-existing water and wastewater operations of the government. Property jointly used for water, wastewater and governmental non-utility functions shall be equitably allocated between the government and the authority, provided that the allocation assures the continuing efficient functioning of water production and distribution, and wastewater collection and disposal. In the event of dispute, the allocation shall be determined by the Governor. The property accounts for the water and wastewater utility are valued for ratemaking purposes at the depreciated acquisition cost of the property as of the date of transfer, and shall be included in the rate base of the water and wastewater utility. Future capital contributions to the authority from the government shall be by separate authorization and appropriation. The Legislature has the exclusive power to provide supplemental funding by appropriation for operations of the water and wastewater systems of the authority. Appropriations made to the Authority after October 1, 1988 for the operation of the water system may be designated as loans and may require repayment to the government at rates of interest specified in the appropriations acts. Appropriations made to the authority after October 1, 1988 for the operation of the wastewater system shall be designated as subsidies for fiscal year 1989 and thereafter in the amount of \$600,000 annually. The wastewater operation subsidy shall be adjusted annually on September 30 of each year, beginning in 1992, in proportion to the change in number of wastewater customers compared to the number of such customers on June 30, 1991, and in proportion to the annual increase in the American Samoa Consumer Price Index.

History: 1982, PL 17-56 § 7; 1991, PL 22-14 § 3.

Amendments: 1991 PL 22-14 establishes a division of water and wastewater utility in the American Samoa Power Authority and to allow the authority to borrow; adds (b) to create the water and wastewater utility and designate electric utility as (a).

15.0107 Accounting and budget.

The authority shall assume responsibility for the accounting and financial management of the electric utility, and water and wastewater systems, and shall administer or contract with the government for the administration of all accounting systems, including general ledger, fixed assets, accounts receivable, accounts payable, payroll, and cash. It shall establish proper internal accounting controls and procedures, and it shall prepare an annual budget as a part of the Governor's budget process.

History: 1982, PL 17-56 § 8, PL 22-14.

Amendments: 1991 to add "water and wastewater systems".

15.0108 Independent audit reports--Utility consultants--Annual reports.

(a) The authority shall employ a firm of independent certified public accountants with electric utility experience to examine and report upon the status of financial records and accounts, and may renew that employment annually. Copies of those reports must be furnished to the Governor and the Legislature.

(b) The authority may make intergovernmental or contractual arrangements for expert consultants to advise and consult with it in all matters related to the operations of the authority, including ratemaking, system design, planning, budgeting and legal matters.

(c) The authority shall provide an annual report for each fiscal year to the Governor, the Legislature, and the people of American Samoa, not later than 31 December.

History: 1982, PL 17-56 § 9.

15.0109 Transition period.

All rates, charges, and classifications of the authority in effect during the transfer of property and facilities, and management thereof, to its control and jurisdiction are considered properly adopted and continue in effect until duly changed.

History: 1982, PL 17-56 § 10.

15.0110 Implementation.

(a) Electric utility. This chapter must be implemented according to the schedule prepared initially by the authority task force and carried forward, as supplemented, by the board of directors when appointed, and in no case later than 60 days after 10 November 1982, the effective date.

(b) Water and wastewater utility. The transfer of the water and wastewater utility shall be implemented immediately and the provisions herein shall serve to confirm and ratify the transfer of the water and wastewater utility effected by Executive Orders Nos. 06-1988 and 10-1990.

History: 1991, PL 22-14, § 5

Amendments: 1991 to add (b).

15.0110.1 Notice to customers.

When an American Samoa power authority meter reader visits a customer's property to read a meter, he shall leave a written notice with a person living or working at that location. The written notice shall contain the following information: the date, the meter reading and the signature of the meter reader. If there is no one on the premises when the meter reading is taken, the notice may be posted on the door or door post.

History: 1986, PL 19-39 § 1

Reviser's Comment:

15.0110.1 was passed as 15.0111 but was renumbered at codification to fit within the existing numbering scheme.

15.0111 Penalty fees--Prohibit.

The authority is prohibited from assessing any form of penalty fee or charge on overdue accounts of residential customers.

History: 1985, PL 19-4 § 1.

Chapter 02

NOTICE OF TERMINATION OF SERVICE**Sections:**

15.0201	Definitions.
15.0202	Utility service--Termination--Procedure.
15.0203	Penalties and claims.

15.0201 Definitions.

As used in this chapter, unless the context clearly requires otherwise, the following meanings apply:

(1) "Consumer" means a person, corporation, company, or association who uses and is billed for the services provided by a public utility; and

(2) "Public utility" means a public corporation, company, person, association, authority, or enterprise fund that owns, operates, or controls a plant or equipment within the Territory for the production or delivery of power in any form, water, or telegraph or telephone services, to another person, corporation, company, or association.

History: 1985, PL 19-4 § 1

15.0202 Utility service--Termination--Procedure.

(a) A public utility may not terminate service to a consumer whose account is not delinquent without the consumer's consent. Prior to terminating power, water, telephone, or telegraph services to a consumer whose account is delinquent, a public utility shall serve notice. The notice must include the name, address, and telephone number of the public utility and the name of a person employed by the public utility for the consumer to contact for additional billing or payment information. The notice must include, in bold face print, a message to the effect that service will be terminated after 10 working days from the date of the notice's postmark or from the date the termination notice is posted on the structure where the delinquent account is metered.

(b) A notice of termination of service by a public utility on a consumer must be accom-

plished by first class mail or by attaching a copy of the notice in a conspicuous place on the structure where the delinquent account is metered.

History: 1953, PL 18-2 § 2.

15.0203 Penalties and claims.

A public utility that terminates service to a consumer in violation of this chapter shall credit that consumer's account in an amount equal to \$25.00 for the service termination and \$10.00 for each full day the service remains terminated. Claims are handled by the department of administrative services and the findings of the department are final for purposes of this chapter. The provisions of this section are in addition to any other administrative or judicial remedy available to the consumer.

History: 1953, PL 18-2 § 3.

Chapter 03

OFFICE OF COMMUNICATIONS

Sections:

- | | |
|----------------|---------------------------------|
| 15.0301 | Partial dedication of revenues. |
| 15.0302 | Sunset Provision. |

15.0301 Partial dedication of revenues.

The Legislature shall appropriate annually the sum of \$500,000 from revenues received by the office of communications to provide funds, pursuant to section 11.1906(i) for rental charges to pay the principal and interest on bonds issued by the American Samoa economic development authority to finance the Executive office building of the government during the term of the bonds. The appropriations shall be included in the annual appropriations act for each fiscal year, beginning with fiscal year 1989.

History: 1987, PL 20-39 § 1.

15.0302 Sunset provision.

This chapter is repealed on the date that all of

the bonds issued to finance the Executive office building of the government are fully paid, or provision is made for such payment pursuant to the trust indenture applicable to this bond issue.

History: 1957, PL 20-20 § 1.

Chapter 04

(RESERVED)

Chapter 05

EMERGENCY ENERGY MANAGEMENT

Sections:

- | | |
|----------------|------------------------|
| 15.0501 | Powers of Governor. |
| 15.0502 | Enforcement. |
| 15.0503 | Termination of powers. |

15.0501 Powers of Governor.

To provide for emergency resource management, the Governor, after proclaiming that an emergency exists which threatens to disrupt the social order, or imperil the health and safety of the people of American Samoa may, by rule or executive order:

(1) control, restrict, and regulate by rationing, freezing, use of quotas, allocations, prohibition on shipments, price fixing, allocation, or other means the use, sale, or distribution of fuel, petroleum products, or other sources of energy;

(2) prescribe and direct activities in connection with but not limited to use, conservation, salvage and prevention of waste or fuel or other sources of energy;

(3) take such other action as may be necessary for the management of energy resources during any emergency declared by the Governor.

History: 1974, PL 13-43 § 1.

15.0502 Enforcement.

The law enforcing authorities of the Territory of American Samoa shall enforce the orders and

rules pursuant to this chapter.

History: 1974, PL 13-43 § 2.

15.0503 Termination of powers.

The emergency powers of the Governor shall terminate upon the Governor's declaration that the emergency no longer exists or by concurrent resolution of the Legislature of American Samoa.

History: 1974, PL 13-43 § 3.



OFFICE OF THE GOVERNOR
American Samoa Government
Pago Pago, American Samoa 96799

A.P. Lutali, Governor
 Tauose P. Suaia, Lt. Governor

November 20, 1995

Telephone: (684) 633-4116
 Fax: (684) 633-2269

Serial: 1313

The Honorable Janet Reno
 Attorney General
 Main Justice Building
 10th and Constitution Avenue, N.W.
 Washington, D.C. 20530

Dear Attorney General Reno:

I have learned informally that the Justice Department is preparing draft legislation for presentation to the Congress which would establish new federal court jurisdiction over American Samoa. I am taking this opportunity to share with you my deep concerns regarding this matter, concerns which I have previously expressed in Congressional testimony.

We do not consider the question of federal judicial jurisdiction over American Samoa to be merely a technical or administrative issue. Rather, this is a very complicated and sensitive issue which goes to the heart of our relationship with the United States. We believe the issue should be resolved by mutual consensus, not by unilateral federal action taken over the objections of our people.

Our most important concern is that if an extension of federal judicial authority is contemplated, it must be strictly limited so that it does not provide a vehicle for challenges to our traditional Samoan land tenure system. The United States has pledged to protect and preserve our native lands and culture, and the territorial courts established by the U.S. Navy and the U.S. Department of the Interior have honored that pledge and have developed a body of jurisprudence which balances local customs with federal legal requirements.

If any new federal jurisdiction over American Samoa is deemed necessary, we believe that Congress should codify and augment the jurisdiction of our existing High Court.

Honorable Janet Reno
November 20, 1995
page two

While our High Court does not currently have Article III status, the Justices are appointed by the Federal Government. As a former Associate Judge of the High Court, I can assure you that the Court has enjoyed a long history of respect and acceptance by our people.

Whatever form of new federal jurisdiction is proposed, it must provide for trials and other proceedings in American Samoa before grand juries and trial juries drawn from the local community. It would be fundamentally unfair to subject our people to the inconvenience, expense and potential prejudice of litigation or prosecutions conducted in Hawaii or on the U.S. mainland before grand juries or trial juries composed of persons who are not residents of American Samoa.

Furthermore, any federal judges, magistrates or prosecutors with authority over American Samoa must be drawn from the ranks of our local legal community, and must not be imported from outside. We have passed the point where outside judges and prosecutors are needed to dispense justice in our islands. Federal judges and other officials in American Samoa should be local people, just as they are in federal judicial districts in the United States.

Finally, we reject any suggestion that the small size and remote location of our territory warrant the imposition of outside federal judicial authority in order to save expenses. If the Federal Government sees sufficient need to subject our people to new federal court jurisdiction, it must be willing to incur the cost of providing the same locally-imposed court system enjoyed by other offshore territories of the United States.

Sincerely,

A.P. Lutali
A.P. LUTALI
Governor

cc: The Honorable Bruce Babbitt
The Honorable Daniel K. Inouye
The Honorable Daniel K. Akaka
The Honorable Eni F.H. Faleomavaega



OFFICE OF THE GOVERNOR
American Samoa Government
Pago Pago, American Samoa 96799

A.P. Lutali, Governor
 Tawasa P. Sunia, Lt. Governor

November 20, 1995

Telephone: (684) 623-4116
 Fax: (684) 623-2269

Serial: 1314

The Honorable Bruce Babbitt
 Secretary of the Interior
 1849 C Street, NW, Room 6156
 Washington, D.C. 20240

Dear Secretary Babbitt:

I am enclosing a copy of my letter to Attorney General Janet Reno on the issue of new federal court jurisdiction over American Samoa. I can assure you that the views expressed in my letter reflect the concerns of the leaders and the people of our territory. This is a complicated and sensitive issue which goes to the heart of our relationship with the United States.

We ask for your help in assuring that the Administration does not propose legislation which places our land system and the inheritance of *mazai* titles at risk or which exposes our people to litigation or prosecution off-island, before outside judicial authorities. If the Federal Government sees sufficient need to subject our people to new federal court jurisdiction, we would expect it to provide the same locally accessible court system enjoyed by other offshore territories of the United States.

Finally, should the Administration feel it must propose legislation in this area, we hope that the proposal will be reflective of our concerns and inclusive of our point of view, one which does not ask Congress to impose new federal court jurisdiction over the objections of the people of American Samoa.

Sincerely,

A.P. Lutali
 A.P. LUTALI
 Governor

cc: The Honorable Janet Reno
 The Honorable Daniel K. Inouye
 The Honorable Daniel K. Akaka
 The Honorable Eni F.H. Faleomavaega



OFFICE OF THE GOVERNOR
American Samoa Government
Pago Pago, American Samoa 96799

A.P. Lutali, Governor
Tauose P. Sunia, Lt. Governor

Telephone: (684) 833-4116
Fax: (684) 833-2269

September 15, 1995

Serial: 979

The Honorable Elton Gallegly
Chairman, Subcommittee on Native American
and Insular Affairs
Committee on Resources
1522 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Gallegly:

Enclosed, please find my response to the questions submitted to me by Congressman Eni F.H. Faletavauaga in connection with the August 3, 1995 hearing held by the Subcommittee on the U.S. Department of Justice's Assessment of white collar crime in American Samoa. I appreciate the opportunity to supplement the record.

Please do not hesitate to contact me if you require further information. Thank you for your consideration.

Sincerely,

A.P. Lutali
A.P. LUTALI
Governor

Enclosure

cc: The Honorable Eni F.H. Faletavauaga

1. Q. What led you to believe in early 1993 that white collar crime might have been a problem in American Samoa?
 - A. When I took office, I was advised that the American Samoa Government (ASG) faced a financial deficit estimated as high as \$60 million, and that there were insufficient funds available to meet the first payroll. In addition, I was informed of audit reports which had identified financial irregularities and of reported incidents involving misappropriation of government funds and property.
2. Q. Why did you ask the Department of the Interior for assistance in combatting this problem?
 - A. I wanted to take strong action to show that my Administration was prepared to proceed with aggressive investigation and prosecution of misconduct by public officials. Since the FBI and the Department of Justice have extensive experience with cases of official misconduct, I sought their help as a prompt and effective means of strengthening our local ability to detect, document and prosecute white collar offenses.
3. Q. What assistance did you ask for?
 - A. I requested the assignment of two FBI agents and one Department of Justice attorney to serve temporarily as local officials in the investigation and prosecution of alleged cases of public misconduct.
4. Q. What was the result of your request for assistance?
 - A. Eight months after my request, the Department of Justice entered into a Memorandum of Understanding with the Department of the Interior and ASG to perform an assessment of the white collar crime situation in American Samoa and the need for investigative and prosecutorial assistance. More than a year later, although the assessment had not been completed, a redacted draft of the executive summary was released to members of congress and the media. The draft contained undocumented assertions of widespread corruption and misappropriation of public funds and suggested that the Samoan culture tolerated dishonesty by public officials. Thus, disclosure of the summary generated false and adverse publicity without providing any assistance to our law enforcement efforts.
5. Q. Has this result met your needs?
 - A. The lengthy assessment produced by the Department of Justice went far beyond the scope of my original request and has been a counterproductive distraction in our

Responses to Subcommittee questions
September 15, 1995
page two

efforts to improve law enforcement. While the Department of Justice was engaged in its assessment process, our local Attorney General identified cases for investigation. When it became apparent that timely assistance from the Department of Justice would not be forthcoming, he had to proceed with prosecution of those cases. The statute of limitations, the unavailability of witnesses after a lapse of time and our own commitment to prosecuting white collar crime left no other option.

6. Q. In your statement before the House Subcommittee on Native American and Insular Affairs on August 3, 1995, you noted you have started a white collar crime task force with local resources. What federal assistance do you believe would be beneficial to you?

A. As our Attorney General testified before the Subcommittee, the latest report of the Task Force shows that local prosecution of white collar offenses has been aggressive and successful. However, we could still benefit from the temporary assignment of federal investigators or prosecutors, particularly for the purpose of training our local law enforcement personnel in the more sophisticated techniques necessary for the successful prosecution of white collar offenses.

7. Q. What is your opinion of the recommendations contained in the report issued by the Department of Justice on white collar crime in American Samoa?

A. Federal Court Jurisdiction The question of establishing federal court jurisdiction in American Samoa is very complicated and goes to the heart of our relationship with the United States. Any extension of federal judicial authority should be narrowly limited so that it does not provide a vehicle for challenges to our traditional title and land tenure systems. Before creating any new federal court jurisdiction, the issue should be carefully examined by the relevant congressional committees, and field hearings on the subject should be held in American Samoa.

If the establishment of federal jurisdiction in American Samoa is deemed necessary, Congress should consider augmenting the jurisdiction of our existing High Court. While our High Court does not have Article III status, the Justices are appointed by the Federal government. As a former Associate Justice of the High Court, I know that the Court has enjoyed a long history of respect and acceptance by our people.

Responses to Subcommittee questions

September 15, 1995

page three

Whatever form of federal jurisdiction may be considered, it should provide for trials to be held in American Samoa, not in Hawaii or on the mainland. It would be fundamentally unfair to subject our people to the inconvenience and potential prejudice involved in off-island trials. If appeals into the Federal appellate system are allowed, cases from American Samoa should be heard in American Samoa. I note that the Federal Courts of Appeal typically travel within their circuits to hear cases, including travel to Puerto Rico.

Furthermore, if a federal judicial and prosecutorial function is located in American Samoa, the judges, magistrates and prosecutors should be drawn from the ranks of our local legal community and should not be imported from outside. We have passed the point where outside judges and prosecutors are needed to dispense justice in our islands. Federal judges and officials in American Samoa should be local people, just as they are in federal judicial districts in the United States.

- B. Resident FBI Agency Deployment of FBI personnel is a matter for the Federal government to decide. If a resident FBI agency is established in American Samoa, we would expect the normal cooperative and professional relationship between local and federal law enforcement officials.
- C. Local Federal White Collar Crime Task Force Any arrangement which goes beyond the normal relationship between local and federal law enforcement authorities should be temporary and should concentrate on training and technical assistance.
- D. Law Enforcement Advisory Board Provisions for monitoring the implementation of programs and plans should be made in the context of each project. We see no need for an ongoing Advisory Board with broad-based reporting responsibility.
- E. Improvement of the Department of Public Safety Many of the suggestions by the Department of Justice for improving our Department of Public Safety are valid. Some of them are already being implemented.
- F. Federal Oversight We agree that federal oversight of federal programs in American Samoa can be improved.
- G. Local Legislation The suggestions by the Department of Justice for strengthening our local criminal statutes are generally well-taken. Our Attorney General is

Responses to Subcommittee questions
September 15, 1995
page four

working with our territorial legislature on the preparation and consideration of the suggested legislation.

- H. **ASG-DOI Joint Working Group** The Joint Working Group (JWG) is an important step towards establishing internal mechanisms to ensure federal responsibility and a cooperative partnership between ASG and DOI. However, the Senate version of the FY96 Interior Appropriation would eliminate funding for the JWG.
8. Q. Do you believe an Attorney General of American Samoa elected by popular vote could better serve the interests of justice in American Samoa? Please explain the reasons for your answer.
 - A. Popular election of the Attorney General could make the office more political and less professional. It could also impede cooperation between the Office of the Attorney General and other executive departments and agencies, which is necessary for effective investigation and prosecution.
9. Q. Do you believe an Attorney General appointed by the Governor, confirmed by the legislature, to serve a four to six year term not coinciding with that of the Governor, and removable only for good cause by the legislature would better serve the interests of justice than the current procedure for choosing an Attorney General?
 - A. The current system of appointment and confirmation of our Attorney General is working well and should not be changed. The separation of power embodied in our Revised Constitution properly treats law enforcement as an executive function, and this principle should not be violated by giving the Legislature power to remove the Attorney General.
10. Q. Do you believe giving the Secretary of the Interior or the Attorney General of the United States authority to appoint a federal prosecutor for *ad hoc* service in American Samoa would serve the interests of justice?
 - A. Proper enforcement of federal law is a matter for the Federal Government to determine. Our government will cooperate with federal law enforcement officials in the normal professional manner.

Responses to Subcommittee questions
September 15, 1995
page five

11. Q. Assuming there are individuals residing in American Samoa who owe debts to the United States government, are there any grounds as a matter of policy on which you would oppose the United States suing those individuals in the High Court of American Samoa to recover the unpaid obligations?
 - A. We would not oppose the collection of legitimate federal debts from residents of American Samoa through suits in the High Court of American Samoa. In fact, our Attorney General has, at the request of Federal agencies, collected several debts for the Federal Government in the High Court of American Samoa.

JENNY ANDREW
 DON YOUNG, ALASKA, CHAIRMAN
 AMES V. HANSEN, UTAH
 MSAKTON, NEW JERSEY
 STEVE COHEN, NEW YORK
 JOHN LEWIS JR., TENNESSEE
 DEL HERTEL, COLORADO
 JOHN DOUGLASS, CALIFORNIA
 ANNE DAVIS, WISCONSIN
 WAYNE T. WILCHERS, MARYLAND
 RON CALVERT, CALIFORNIA
 RICHARD W. POMEROL, CALIFORNIA
 PETER T. CLENS, CONNECTICUT
 D. HAYWOOD SMITH, MASSACHUSETTS
 FRANK A. LEMMIANS, OHIO
 BARBARA L. BOXLEY, ARKANSAS
 MICHAEL D. GREGORY, ARKANSAS
 HELEN HENDRY, ARKANSAS
 JUDY SMITH, WASHINGTON
 GEORGE P. PADANGOLAH, ALABAMA
 JAMES E. TIGHE, NORTH DAKOTA
 WILLIAM M. MAC THORNBERRY, TEXAS
 RICHARD COE HASTINGS, UTAH
 ALLAN STUPACK, NEW YORK
 AMIS B. SCHAFFNER, UTAH
 JOHN B. SHADDOCK, ARIZONA

GEORGE KUEHLER, ALABAMA
 MARK DEMING, DEMOCRATIC MEMBER
 NEIL RABALA, WEST VIRGINIA
 BRUCE VENTO, MINNESOTA
 DALE E. KILDEE, MICHIGAN
 PATRICK J. LEAHY, VERMONT
 SAM GEJSTROM, IDAHO
 BILL RICHARDSON, NEW MEXICO
 PETER A. GHAZI, OREGON
 ERIC SWALWELL, CALIFORNIA
 TIM JOHNSON, SOUTH DAKOTA
 NEIL ABERCROMBIE, HAWAII
 GERRY STUDDS, MASSACHUSETTS
 JEFF FORD, PENNSYLVANIA
 SOLOMON P. FRIED, TEXAS
 JAMES M. DOOLEY, ALABAMA
 JAMES C. HOWARD, BANISTER
 MARCIA TAYLOR, PENNSYLVANIA
 MAURICE L. NICHOLS, PENNSYLVANIA
 ROBERT A. WENDELL, PENNSYLVANIA
 DAN FARR, CALIFORNIA

U.S. House of Representatives
Committee on Resources
Washington, DC 20515

September 13, 1995

The Honorable Letuli Toloa
 President of the Senate
 Legislature of the American Samoa
 Pago Pago, American Samoa 96799

Dear Senator Letuli:

Attached is the list of questions which I indicated would be forwarded to you in our Subcommittee hearing on August 3, 1995 on the American Samoa White-Collar Crime Assessment of December 1994 (Redacted Version).

It would be helpful to the Subcommittee to receive responses by the close of business on September 29, 1995.

Your attention to this request is appreciated.

Sincerely,

 ELTON GALLEGLY
 Chairman
 Subcommittee on Native American
 & Insular Affairs

Enclosure

Subcommittee on Native American and Insular Affairs
Hearing on American Samoa White Collar Crime
August 3, 1995

QUESTIONS FOR THE PRESIDENT OF THE SENATE

1. The establishment by local American Samoa law of an independently audited, semi-autonomous agency responsible for certain public utilities and infrastructure has proven to provide for improved standards of financial accountability and managerial operations. The American Samoa Power Authority (ASPA) has also demonstrated the capability of American Samoans to competently and effectively manage a complex operation and meet strict audit standards. When will the legislature act on proposals to establish other similar authorities?
2. What type of competitive bidding practices do you believe should be required and enforced under local law? Consistent with the federal Code of Federal Regulations? Would the adoption of CFR bidding standards prevent potential conflicts of interest and abuse?
3. In view of what was presented in the assessment, should the Department of Interior or the Government of American Samoa set the priorities for capital improvement projects?
4. How should federal criminal jurisdiction be established for American Samoa?
5. The assessment indicates the lack of financial controls have contributed to an environment resulting in fraud and abuse of funds. What level of resources will the legislature provide the necessary resources to enable the government of American Samoa to meet the financial accountability necessary to comply with the audit standards of the federal single audit act?
6. When will the legislature to enact a general fraud statute to meet the concerns raised in the assessment?



AMERICAN SAMOA GOVERNMENT
OFFICE OF THE PRESIDENT OF THE SENATE
LEGISLATURE OF AMERICAN SAMOA

LETULI TOLOA
President

Tel: (684) 633-4565
633-5231

December 27, 1995

The Honorable Elton Gallegly
Chairman
Subcommittee on Native American
& Insular Affairs

Re: Responses to Questions on White Collar Crime

Dear Chairman Gallegly:

I acknowledge receipt of your letter regarding the referenced material.

The following are my answers to the questions you sent.

1. At present time we have committees from the House and Senate on fact-finding tours in Hawaii and California. The objective of the tours is to obtain facts to enlighten the Legislature on the pros and cons for the establishment of a Hospital Authority to operate the LBJ Medical Center. After the proposal for a Hospital Authority is disposed of, we might revive the proposal for a Port Authority to manage and operate the port and the airport.
2. (a) Competitive bidding should be in accordance with the requirements of the local procurement state and regulations.
- (b) Yes. The local laws should be patterned after the Code of Federal Regulations.
- (c) Yes, CFR bidding standards are the results of the vast experience of the federal government in the problems of conflict of interest and abuse.

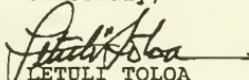
Page 2
December 27, 1995
The Honorable Elton Gallegly
Chairman, Subcommittee on Native
American and Insular Affairs

3. I believe the American Samoa Government is in a better position to evaluate and set the priorities for capital improvement.
4. By including American Samoa in the jurisdiction of the federal district court in Hawaii.
5. The Legislature will provide the highest level of resources upon receiving facts that will support the need.
6. Hopefully, the next session of the Legislature.

I hope my answers to the committee's questions will be helpful in preparing your assessment.

On behalf of the Senate and the people of American Samoa, I thank you for your interest in our welfare.

Sincerely,



LETULI TOLOA
President of the Senate

JAN 1 1996



LEGISLATURE OF AMERICAN SAMOA
HOUSE OF REPRESENTATIVES
OFFICE OF THE SPEAKER

TALAVOU ALE
SPEAKER

TELEGRAM

December 28, 1995

The Honorable Elton Gallegly
Chairman, Subcommittee on Native
American and Insular Affairs
Washington, D.C. 20515

Dear Mr. Chairman:

Attached herewith are responses to questions related to
Subcommittee hearing on August 03, 1995 on the American Samoa
White-Collar Crime Assessment of December 1994.

I would like to apologize for the late submission of answers
and hope this would help the committee. Please advise if any
other information needed.

Soifua,

Savali Talavou Ale
SAVALI TALAVOU ALE
Speaker of the House
of Representatives

STA/jml

encl/



LEGISLATURE OF AMERICAN SAMOA
HOUSE OF REPRESENTATIVES
OFFICE OF THE SPEAKER

TALAVOU S. A.
SPEAKER

Mr. M.
Mr.

Subcommittee on Native American and Insular Affairs
Hearing on American Samoa White Collar Crime
August 3, 1995

ANSWERS TO QUESTIONS
FOR THE SPEAKER OF THE HOUSE

Question No. 1.

The establishment by local American Samoa law of an independently audited, semiautonomous agency responsible for certain public utilities and infrastructure has proven to provide for improved standards of financial accountability and managerial operations. The American Samoa Power Authority (ASPA) has also demonstrated the capability of American Samoans to competently and effectively manage a complex operation and meet strict audit standards. When will the legislature act on proposals to establish other similar authorities?

Response:

I am happy to report that the people of the Territory of American Samoa are proud of the performance record of the American Samoa Power Authority in the past several years, especially the authority's commitment to maintaining a financial operation consistent with the Territorial guidelines issued by the federal offices of Management and Budget and the Territorial and International Affairs of the Interior department. Your Committee properly pointed out that Power Authority has clearly demonstrated its superlative skills in all areas of complex construction. We are witnessing a steady progress of the work delegated to the Authority pertaining to the improvement of our infrastructure. This bright picture represents on one side the competency of ASPA's management and workers.

The other side of the picture is not so bright. It portrays the government's concern over the costs involved in operating the Power Authority. For the current fiscal year, ASPA will operate in a budget that exceeds \$20 million, which is 13% of the government's total budget. So while professional bookkeepers and expert engineers produced commendable results the Territory plainly cannot afford another authority that requires this much money to operate.

Subcommittee on Native American and Insular Affairs
Page 1.....

Question No. 2.

What types of competitive bidding practices do you believe should be required and enforced under local law? Consistent with the federal code of Federal Regulations? Would the adoption of CFR bidding standards prevent potential conflicts of interest and abuse?

Response:

Ostensibly, the Assessment presented to your Subcommittee did not include activities of the American Samoa Government's operation in the last eighteen months. To update the Committee's information, there is no indication that the system followed by the territorial government in procuring its supplies and services need significant changes as suggested. In fact, our procurement rules basically mirrored those of the federal government's. Competitive offers are required in cases of procurement by formal advertising and proposals in cases of procurement by negotiations. The Chief Procurement Officer is responsible to reach as much qualified sources as possible when advertising. He is required to ensure free and open competition as is consistent with the procurement of types of supplies and services necessary to meet the requirements of the agency concerned.

Exceptions allowed in cases of public exigency and purchases in amounts less than \$10,000 are also basically identical to federal exemptions in these situations.

Technical standards established in the CFR for the federal government employees and contractors were adopted by the territorial government.

It is therefore my position that the American Samoa Government procurement rules are adequate for our situation. The human weaknesses; i.e., "conflict of interest", "abuse", and other unethical arrangements resulting in discrepancies noted in the Assessment were not unique to American Samoa. If unethical conduct of personnel involved is not corrected, new systems cannot provide the solution.

Question No. 3.

In view of what was presented in the assessment, should the Department of Interior or the Government of American Samoa set the priorities for capital improvement projects?

Response:

Concerning Capital Improvement Projects, proximity is a major consideration. And since the government of American Samoa is situated in a better observation point than Interior ASG should set priorities for its capital improvement.

Subcommittee on Native American and Insular Affairs
Page 3.....

As a review the records of C.I.P.'s approved and funded in the recent past it manifested Interior's preferential to projects initiated by the American Samoa Power Authority. According to our information, Interior's partiality toward ASPA is due to the Authority's good record on financial accountability and proven management skills. The mark is badly missed. Prioritizing of capital improvement projects is based solely on need. Keeping good financial records is purely clerical. Let me remind the Committee that the American Samoa Government has employed a highly qualified and reputable auditor from San Francisco.

Question No. 4.

How should federal criminal jurisdiction be established for American Samoa?

Response:

The question on federal criminal jurisdiction will be referred to the Judiciary Branch here in American Samoa. The position of the judiciary is paramount in this regard.

Question No. 5.

The assessment indicates the lack of financial controls have contributed to an environment resulting in fraud and abuse of funds. What level of resources will the legislature provide the necessary resources to enable the government of American Samoa to meet the financial accountability necessary to comply with the audit standards of the federal single audit act?

Response:

Much blame for the financial problems of American Samoa has been placed on poor accountability. Although this may be generally true, I wish to refer your Committee's review to some of the factors that contributed to the assessors' conclusion.

- A. It is crucial to understand that Federal Emergency Management Agency (FEMA) funds approved to aid the Territory in the 3 hurricanes that devastated American Samoa within the last decade (Tusi - 1987, Ofa - 1990, Val - 1992) were deposited into the government general fund and commingled with local operations funds. And when FEMA asked for financial reports at the completion of hurricane recovery operations, ASG agencies designated to account for FEMA funds were unable to provide the financial reports. The American Samoa Government expended commingled funds indiscriminately and the financial managers could not produce expense records identifying FEMA funds used on disaster related expenditures.

Subcommittee on Native American and Insular Affairs
Page 4.....

- B. Simultaneously, the American Samoa government's financial managers had overestimated government revenue. (A problem unrelated to accountability but ties in with the overall picture). It is believed the government then used disaster funds to meet its operation costs. In addition, the government's financial management system failed to properly keep accounting records and produce reliable financial reports. Further, the key position of government comptroller remained vacant for a number of years during this period. One of the results was the government treasury's inability to assemble the necessary information for the Comprehensive Annual Financial Report for fiscal year 1992. The FY 1992 CAFR (without the auditor's certification) was finally published in 1995.

Question No. 6.

When will the legislature to enact a general fraud statute to meet the concerns raised in the assessment?

Response:

The Legislature's legal staff and the Attorney General's legal staff have been instructed to research and draft a fraud statute suitable for our jurisdiction.



OFFICE OF THE TERRITORIAL AUDITOR
American Samoa Government
Pago Pago, American Samoa 96799

A. P. LUTALI
Governor

R. Wendell Harwell, CPA, CFE
Territorial Auditor

TAUESE P. SUNIA
Lt Governor

Telephone: (684)633-5191
Facsimile: (684)633-1039

September 11, 1995

Honorable Eni F. A. Faleomavaega
Congress of the United States
House of Representatives
Washington, D.C. 20515-5201

Dear Representative Faleomavaega:

The following is in answer to the questions posed to me in your letter of August 18, 1995:

1. Question: Are there any impediments to you performing your audit functions in an independent manner? If so, please state the impediments and any recommendations you have to remove or reduce those impediments?

Answer: There are no impediments to me in performing audit functions relating to the executive branch of the American Samoa Government (ASG). This office does not have the legal authority to audit the Legislative or Judicial branches of the ASG, as I believe you are aware.

2. Question: Is there authorized and appropriated sufficient funding to fully perform your audit functions?

Answer: While additional funding (and additional staff) would certainly increase the audit coverage by this office, I believe the present (and proposed future) funding of this office to be reasonable in view of the size of the ASG.

3. Question: Please provide an organizational structure of your office and explain the sources and amounts of funding for the Territorial Audit Office for fiscal year 1995.

Honorable Eni F. H. Faleomavaega

September 11, 1995

3. Answer: An organization chart of the Territorial Audit Office (TAO) is attached. An offer has been made to an applicant for the position of audit manager. The vacant position for Technical Assistant will be filled subsequent to the employment of an audit manager.

Funding for the TAO was provided as follows for fiscal year 1995:

Local ASG funds	\$249,500
Grant from the DOI	<u>46,500</u>
	<u><u>\$296,000</u></u>

4. Question: Given the staffing you expect when current recruiting is completed, on average, how often will each agency in the executive branch of the American Samoa Government be audited?

Answer: Deloitte & Touche are the ASG's external certified public accountants, and that firm audits not only the financial statements of the ASG, but also conducts a Single Audit. A Single Audit includes independent auditors' reports on the following:

Internal Control Structure
Compliance with Laws and Regulations Related to the Audit of
General Purpose Financial Statements
Internal Control Structure Used in Administering Federal Financial
Assistance Programs
Schedule of Federal Financial Assistance
Compliance with General Requirements Applicable to Federal
Financial Assistance Programs
Compliance with Specific Requirements Applicable to Major Federal
Financial Assistance Programs
Compliance with Specific Requirements Applicable to Nonmajor
Federal Financial Assistance Programs

A Single Audit is designed to, among other things, preclude the necessity of a government to provide a separate audit on each financial assistance program. Consequently, this office believes it a waste of scarce financial

Honorable Eni F. H. Faleomavaega

September 11, 1995

4. Answer resources to duplicate the work of the external auditors. Our main focus is
(Continued) on (a) the strengthening of internal financial controls and systems, and (b) cost saving measures attributable to the introduction of good business practices and/or the reduction of fraud, waste and abuse.

For example, we have conducted limited scope audits of the Off-Island Medical Referral Program of the LBJ Tropical Medical Center and of the Procurement, Control and Use of Government Vehicles. The implementation of the recommendations made in only these two audits will result in savings of hundreds of thousands of dollars each year. We are conducting, at the present time, audits of the procurement system of the ASG and its components. We believe these audits will also result in substantial savings to the ASG. Additionally, we have just completed audits (now released in draft form for response by the auditee) of several federal grants that have already resulted in criminal prosecution of one individual.

Therefore, this office has no expectation of auditing each agency in the Executive Branch of the ASG each year. Instead, we prioritize our audits by asking the question "Which department, agency, program or activity has the most potential for the strengthening of internal financial controls or the reduction of fraud, waste and/or abuse?"

5. Question: Are there any agencies within the executive branch of the American Samoa Government not included in your audit plan?

Answer: As discussed in the answer to Question 4 (above), the ASG's external auditors, Deloitte & Touche, are responsible for financial audits of all agencies and grants. The focus of the Territorial Audit Office is primarily to strengthen financial internal controls and to reduce fraud, waste and abuse.

For example, this office is, among other things, currently engaged in conducting an audit of the procurement system of the ASG and of its components, government wide. The scope of our audit work on the procurement system is much more comprehensive than that performed by the external auditors. Since the external auditors' role is to report on the fair presentation of the financial statements taken as a whole, and to perform fairly specific audit steps regarding federal funds, the scope of their examination is directed specifically to that end. Any recommendations as to internal financial controls are a by-product of the Single Audit. Conversely, our

Honorable Eni F. H. Faleomavaega

September 11, 1995

5. Answer role is to examine financial controls (along with compliance therewith) and
(Continued) systems in much greater detail in order to, specifically, recommend improvements to financial controls and to reduce fraud, waste and abuse.

Our audit plan includes departments, agencies, programs and activities that we believe require the greatest improvements in financial internal controls and/or will result in the greatest reward from the reduction of fraud, waste and abuse.

6. Question: In your opinion, does the Territorial Auditor have the authority to audit the American Samoa Power Authority and the Hospital Authority?

Answer: Yes. The Territorial Auditor believes he has the authority to audit any department, agency or component of the American Samoa Government, including the American Samoa Power Authority and the Hospital Authority. In fact, the Territorial Audit Office has already reported on the Off-Island Medical Referral Program within the last year.

7. Question: Do you believe greater independence should be given to the Territorial Auditor of American Samoa? If so, do you have any recommendations on how best to do this.

Answer: The Territorial Auditor believes that he is completely independent at the present time. The Territorial Auditor was appointed by the Governor, and confirmed by both houses of the legislature. While the Territorial Auditor has a responsibility to send issued reports to the Governor, the President of the Senate and the Speaker of the House, the selection and scope of audits is at the sole discretion of the Territorial Auditor. The Territorial Auditor, by statute, cannot suffer a reduction of salary and cannot be removed without a two-thirds vote of both houses. Additionally, the present Territorial Auditor has included in his contract with the ASG a covenant that he may resign with a substantial financial penalty to the American Samoa Government if the budget or staff of the Territorial Audit Office is reduced (other than by a proportional reduction as a part of a general reduction in government operations) to an extent which materially and adversely affects the ability of the Territorial Auditor to perform his duties. The Territorial Auditor would not have accepted the position without the ability to be and to remain to be independent.

Honorable Eni F. H. Faleomavaega

September 11, 1995

8. Question: If during the course of an audit possible criminal activity is discovered, how are referrals made to the Attorney General or the Commissioner of Public Safety?

Answer: If possible criminal activity is discovered during an audit, a Special Confidential Report is prepared detailing the suspected irregularities, and providing supporting documentation. Such Special Confidential Reports are, by statute, given only to the Attorney General. The present Territorial Auditor personally reviews each Special Confidential Report with the Attorney General and/or an Assistant Attorney General at the time of issuance. These reports are treated as confidential and privileged client/attorney communications.

9. Question: Have any criminal referrals been made since you have become Territorial Auditor? If so, what has been the result of these referrals?

Answer: Prior to the Territorial Auditor's verbal testimony to the Sub-Committee on August 3, 1995, the present Territorial Auditor had issued six Confidential Special Reports to the Attorney General requesting investigation of possible criminal activity.

Three of those referrals have already been prosecuted, one has been administratively settled, and one is still under investigation. One referral was not prosecuted due to the difficulty of proving the allegations; the internal controls of the particular agency audited were so lax as to preclude determination as to who specifically had access to certain stolen cash (those controls have now been strengthened).

Subsequent to the Territorial Auditor's verbal testimony to the Sub-Committee on August 3, 1995, four additional Confidential Special Reports have been issued to the Attorney General requesting investigation of possible criminal activity.

We believe our working relationship with the Attorney General and his Office to be excellent.

Honorable Eni F. H. Faleomavaega

September 11, 1995

10. Question: Is there in existence a system or procedure to track audit recommendations once they have been made? If so, please describe the system or procedure. Who determines when an audit recommendation has been complied with?

Answer: The Territorial Audit Office maintains a system of tracking Territorial Audit Office recommendations on computer. The Territorial Auditor has the sole authority to determine successful implementation of and compliance with audit recommendations.

If you have additional questions, please do not hesitate to call or write.

Yours very truly,



R. Wendell Harwell, CPA, CFE
Territorial Auditor



BOSTON PUBLIC LIBRARY



3 9999 05984 145 0

ISBN 0-16-052335-4



9 780160 523359